

Articles

Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms

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Some groups use endemic social norms rather than formal law to regulate their intellectual property (IP). This qualitative empirical study extends and critiques existing work on this topic by examining how roller derby skaters guarantee exclusive use of the pseudonyms under which they compete. Roller derby names are a central part of this countercultural, all-girl sport, adding to its distinctive combination of punk and camp. Skaters have developed an elaborate rule structure, registration system, and governance regime to protect the uniqueness of their pseudonyms. The development of this extralegal governance scheme despite the ready availability of IP theories (e.g., trademark, right of publicity) to protect derby names shows that IP norms emerge independently of law's substantive (un)availability, so long as the relevant group is close-knit and the norms are welfare enhancing. These groups are especially likely to craft formal regulation and registration schemes to buttress informal norms where the relevant community is identity constitutive and where the intangible goods arise from nonmarket production. This study also suggests another way of thinking about the problem of supplying property systems, casts (further) doubt on the coherence of the prevailing neoclassical economic assumptions underlying IP law, and reflects on what it means for rules to be law.

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Introduction: Norms in IP's Positive Space

The idea that law provides a shared framework against which we all frame our conduct—a notion known as “legal centralism”—may seem so instinctive that it need not be questioned. The old maxim *ignorantia legis neminem excusat* assumes that people are charged with knowledge of (and, ideally, deterred by) criminal law.¹ And as Robert Mnookin and Lewis Kornhauser famously put it in the context of private law, parties “do not bargain . . . in a vacuum; they bargain in the shadow of the law.”² Fortunately, though, some scholars thought to question the assumption of law's centrality for the average person and found, surprisingly, that it's often not valid. In fact, people often act not in the shadow of law but without any

1. See Raymond Paternoster, *How Much Do We Really Know About Criminal Deterrence?*, 100 J. CRIM. L. & CRIMINOLOGY 765, 766 (2010) (“The concept of deterrence is quite simple—it is the omission of a criminal act because of the fear of sanctions or punishment.”).

2. Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 968 (1979).

consciousness of law whatsoever. Robert Ellickson's study of ranchers in far northern California provided the cornerstone account that called legal centralism into question. His study of Shasta County cattlemen found that ranchers' rules and practices governing cattle trespass bore no relationship to applicable tort law and were instead the product of organically emergent, entirely informal, but still highly effective, social norms.³ Nobel Laureate Elinor Ostrom's work has similarly revealed that in the context of natural resource management, parties often work together to create private governance of resource commons in efficiency-enhancing ways that operate independently of state regulation.⁴ Lisa Bernstein has also shown that some professional groups, such as Amsterdam diamond merchants and Memphis cotton traders, have developed industry norms to govern their businesses despite the ready availability of state-created law.⁵ These accounts strike at the heart of legal centralism; they suggest that actors create norms independently of, not in reaction to, law.

More recently, commentators have investigated professional groups that generate valuable intellectual property (IP) but regulate it by means of informal norms rather than formal law. Emmanuelle Fauchart and Eric von Hippel's work on French chefs made the first move in this direction.⁶ It is critical to chefs' professional success and advancement that they receive credit for the IP—recipes—that they create. Fauchart and von Hippel found that French chefs use a system of simple, stable social norms to regulate attribution for and use of these recipes by other chefs.⁷ The result is a regulatory system that operates at minimal cost but still creates value and achieves compliance by assuring all chefs that their recipes are protected from free riding. In one sense this replicates the results of earlier work on social norms, finding that close-knit groups often develop norms-based systems that enhance efficiency.⁸ But this study, in contrast to earlier work,

3. See ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 40 (3d prtg. 1994) (“[L]egal rules hardly ever influence the settlement of cattle-trespass disputes in Shasta County.”).

4. See ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 61 (1990) (“On the contrary, what one observes in these cases is the ongoing, side-by-side existence of private property and communal property in settings in which the individuals involved have exercised considerable control over institutional arrangements and property rights.”).

5. Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115, 115 (1992) [hereinafter Bernstein, *Opting Out*]; Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724, 1724 (2001) [hereinafter Bernstein, *Private Commercial Law*].

6. See generally Emmanuelle Fauchart & Eric von Hippel, *Norms-Based Intellectual Property Systems: The Case of French Chefs*, 19 ORG. SCI. 187 (2008).

7. See *id.* at 192–96 (enumerating social norms regulating attribution among chefs and presenting evidence of their enforcement).

8. See, e.g., Dotan Oliar & Christopher Sprigman, *There's No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy*, 94 VA. L.

suggested a legal centralist account for why actors opt for norm-based instead of law-based systems. As the authors explain, “conditions [are] favorable to norm-based IP systems” when “any extant law-based . . . IP protection [is] inadequate or unsatisfactory in some way.”⁹

Other work has investigated similar spheres located in IP’s “negative space”¹⁰—areas where intellectual property law cannot or does not reach and where subcultures or professions also create informal, norm-based property systems to regulate the intangible goods that law does not. Jacob Loshin has shown that magicians rely on informal professional rules to make sure their illusions are not used without attribution or exposed to the public.¹¹ Dotan Oliar and Chris Sprigman’s work on stand-up comedians reveals a similar norm-based dynamic at play, governing the creation, production, and protection of jokes in that subculture.¹² Law occupies a central place in each of these accounts: Loshin as well as Oliar and Sprigman devote a major subpart of their respective articles to articulating both substantive and practical reasons why extant IP law does not well serve magicians or stand-up comedians.¹³ Oliar and Sprigman suggest a causal link between law’s unavailability and comedians’ choice to use a norm-based system of protection: “The absence of lawsuits [between rival comedians] is not terribly surprising. . . . [C]opyright law does not provide comedians with a cost effective way of protecting the essence of their creativity.”¹⁴ While not a major claim of this scholarship, the suggestion appears to be that these extralegal norms arise *because* IP law is substantively or practically

REV. 1787, 1859–60 (2008) (describing findings in the context of joke-stealing among comedians that suggest norms serve to avert market failure).

9. Fauchart & von Hippel, *supra* note 6, at 199.

10. See Kal Raustiala & Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92 VA. L. REV. 1687, 1764 (2006) (coining this phrase); see also Elizabeth L. Rosenblatt, *A Theory of IP’s Negative Space*, 34 COLUM. J.L. & ARTS 317, 322–25 (2011) (discussing in general terms the idea of IP’s negative space).

11. Jacob Loshin, *Secrets Revealed: Protecting Magicians’ Intellectual Property Without Law*, in *LAW AND MAGIC: A COLLECTION OF ESSAYS* 123, 136–37 (Christine A. Corcos ed., 2010).

12. Oliar & Sprigman, *supra* note 8, at 1812.

13. See Loshin, *supra* note 11, at 130–34 (describing how copyright, patent, and trade secret law fail to provide significant protection for magicians’ IP); Oliar & Sprigman, *supra* note 8, at 1799–809 (listing practical and doctrinal hurdles to protecting stand-up comics’ jokes by means of formal IP law).

14. Oliar & Sprigman, *supra* note 8, at 1789–90. Not all work in this vein, it should be noted, takes a legal centralist stance or even suggests an account for why actors opt for norm-based instead of law-based IP systems. Rebecca Tushnet’s study of norms governing fan-fiction creators, for example, simply traces the development of these norms without explicitly or implicitly suggesting law’s role in their evolution. See Rebecca Tushnet, *Payment in Credit: Copyright Law and Subcultural Creativity*, 70 LAW & CONTEMP. PROBS. 135, 153 (2007) (discussing attribution norms governing subcultural creation on the Internet); see also Jacqueline D. Lipton, *Copyright’s Twilight Zone: Digital Copyright Lessons from the Vampire Blogosphere*, 70 MD. L. REV. 1, 20 (2010) (“Optimally, legislators would create laws that reinforce acceptable norms about permissible online uses of copyrighted works. This way, norms could regulate on their own while the law’s expressive and enforcement functions would help fill in the gaps and bolster the effectiveness of norm regulation.” (footnotes omitted)).

unavailable to regulate the intangible goods created by these professional groups.¹⁵

This Article extends and critiques these stories of norm emergence by analyzing a distinctive instance of the extralegal regulation of IP: roller derby pseudonyms. Women's roller derby is an increasingly popular sport that is equal parts athletic contest and rock-and-roll spectacle. One of derby's most recognizable features is that its participants skate not under their real names but using amusing pseudonyms that fit with derby's campy, punk aesthetic. Maintaining the uniqueness of these names is important for skaters, both to avoid confusion and because derby names are a constitutive feature of skaters' identities within the derby community. As a result, derby girls¹⁶ have invented an elaborate system of name registration, monitoring, and enforcement using a combination of formal norms, informal norms, and even a small degree of formal law.

Roller derby provides a novel site for investigating IP norm development that adds to the current understandings of this issue in two ways.¹⁷ The first is a twist on the current literature about IP norms. Derby girls are unlike the magicians, chefs, and comedians that have been the subjects of similar investigations in one salient respect: there are areas of law (trademark, right of publicity) substantively applicable to the IP they create.

15. See Loshin, *supra* note 11, at 134–35 (outlining the inapplicability of IP law to illusions as central in causing magicians to opt for norms); Oliar & Sprigman, *supra* note 8, at 1799–809 (identifying the practical and doctrinal inapplicability of IP law to comedians to regulate jokes).

16. I use the term *derby girl* (or, alternatively, *rollergirl*) here and throughout this Article because it is the term of choice used throughout the subculture to identify the sport's participants. This usage is evident in the names of leagues (Los Angeles's Angel City Derby Girls), books about the sport (Shauna Cross's *Derby Girl*), and blogs (*Big Derby Girls Don't Cry*). While referring to women as "girls" may reasonably be understood as dismissive or even demeaning in some contexts, just the contrary is true in roller derby. Cf. Robin Brontsema, *A Queer Revolution: Reconceptualizing the Debate over Linguistic Reclamation*, 17 COLO. RES. LINGUISTICS, June 2004, at 1, 4–5, available at http://www.colorado.edu/ling/CRIL/Volume17_Issue1/paper_BRONTSEMA.pdf (describing the LGBT community's reclamation of the term *queer* in an attempt to defuse the word of its derogatory connotations).

17. It bears emphasizing that in this Article, I seek only to investigate the development of extralegal IP *governance systems*. There is also a rich and interesting literature on the phenomenon of IP's creation independent of the existence of legal or norm-based protection. See, e.g., Raustiala & Sprigman, *supra* note 10, at 1691 (arguing that fashion's proliferation in the absence of any IP protection is efficient); see also Katherine J. Strandburg, *Curiosity-Driven Research and University Technology Transfer*, in UNIVERSITY ENTREPRENEURSHIP AND TECHNOLOGY TRANSFER: PROCESS, DESIGN, AND INTELLECTUAL PROPERTY 93, 96–99 (Gary D. Libecap ed., 2005) (discussing "curiosity-driven" allotment of research resources among scientists on the basis of interest in the content of the research). But see C. Scott Hemphill & Jeannie Suk, *The Law, Culture, and Economics of Fashion*, 61 STAN. L. REV. 1147, 1180–84 (2009) (questioning Raustiala and Sprigman's efficiency thesis).

What distinguishes fashion designers and academics from chefs, magicians, and comedians (as well as roller derby girls, as we shall see) is that the former create IP largely irrespective of the presence of governance and the incentives it promises, while the latter create IP only pursuant to an elaborate norm-based governance regime that operates outside the boundaries of the state. While the two issues are not unrelated, I will focus exclusively on the emergence and development of extralegal IP governance (not the production of IP itself) in this Article.

And yet they do not, opting to invent an elaborate series of name-uniqueness norms and rules instead. This fact alone undermines the sufficiency of legal centralism as an explanation for IP norm emergence, illustrating that such norms may arise even if—and in fact regardless of whether—law provides a plausible governance option.

But having established that the prevailing legal centralist account does not fully explain the development of extralegal IP governance, it remains necessary to account for why this development does take place. The non-legal centralist story about the development of organic, unwritten social norms helps to provide such an account,¹⁸ but it can only go so far because roller derby's name regulation system consists of more than shared, informal understandings. Rather, derby girls have developed an elaborate, formal scheme of registration, regulation, and enforcement that requires ongoing modification and administration.

The formality of roller derby's name regulation system raises an iteration of what Elinor Ostrom has called "the problem of supply."¹⁹ The time and effort spent by the women who created and maintained this system swamped any marginal benefit they derived from the system in the form of name security. Exploring why derby girls undertook to do this in the absence of traditional forms of compensation yields a conjecture that helps to explain the development of formal norm-based systems in similar contexts. It may be the very absence of traditional forms of remuneration that explains why the derby girls who created and maintained the name regulation system were inspired to do so. For example, derby girls' names are the result of nonmarket production—that is, they are part of a nonprofit endeavor.²⁰ As I explain in more detail later, it is the volunteer character of derby that, somewhat counterintuitively, explains the development of its elaborate extralegal name regulation system. The other feature is the sport's identity-constitutive character. People don't do derby just for exercise but usually because it becomes a part of who they are—"I'm a derby girl" is a very common self-descriptive for skaters. This feature also helps to explain the willingness of skaters to create, administer, and obey the subculture's rules about name uniqueness even in the absence of state enforcement.²¹

This Article elaborates the foregoing claims in several parts. Part I provides a brief background of roller derby and then situates the practice of using skate names within the context of the sport, explaining their meaning

18. See *supra* notes 3–5 and accompanying text.

19. See Ostrom, *supra* note 4, at 42 (defining the "problem of supply" as the concern that welfare-enhancing institutions may not be supplied due to collective-action problems).

20. Derby girls are not professionals, in that they don't get paid to skate. In fact, they usually have to pay in order to be part of a league.

21. See GEORGE A. AKERLOF & RACHEL E. KRANTON, *IDENTITY ECONOMICS: HOW OUR IDENTITIES SHAPE OUR WORK, WAGES, AND WELL-BEING* 42–46, 59 (2010) (arguing that people who derive "identity utility" from their work tend to be more diligent and efficient, and identifying the military as one example of this phenomenon).

and significance for rollergirls. Part II describes the system derby girls have developed to maintain the uniqueness of their pseudonyms, including consideration of formal rules, informal norms, and state-sanctioned law. Part III explores the significance of this case study, explaining how it complicates extant accounts of IP norm emergence, indicates a countertheory for the development of user-generated governance systems, suggests an expanded account for why people create property systems at all, and reflects on the implications of this inquiry for the question of what it means for rules to be law. Finally, the conclusion reflects briefly on the future, and possible end, of derby names.

I. What's in a (Derby) Name? How Derby Names Emerged and What They Mean

A. *Contemporary Roller Derby: A Brief Overview*

Although this Article focuses only on roller derby's relatively recent contemporary incarnation, the sport has actually long been part of American culture. As long ago as the 1880s, crowds flocked to see roller skaters compete in multiday marathon races so grueling that the competitors sometimes died afterward.²² Derby took its modern form during the depths of the Great Depression, when Chicago impresario Leo Seltzer introduced women and violence into the sport, earning brief but roaring success.²³ For the next several decades, roller derby made temporary, localized splashes of popularity in mainstream American culture, thanks to a crowd-pleasing mix of fast sport and dramatic spectacle.²⁴ Five million fans attended roller derbies in 1940, followed by a quiet period during World War II.²⁵ In the late 1940s, CBS began to televise roller derby bouts weekly, and roller derby events at Madison Square Garden regularly sold out.²⁶ In the late 1960s, roller derby was popular enough in the Bay Area that it often drew more fans to the Alameda County Stadium than the Oakland Raiders did.²⁷ By the late twentieth century, though, derby appeared to be dying a slow, tacky death.

22. Seriously. During the first major roller skating marathon held at Madison Square Garden in 1885, William Donovan of Elmira, New York, emerged victorious by skating for six days straight—and then died within a week due to exhaustion. JENNIFER “KASEY BOMBER” BARBEE & ALEX “AXLES OF EVIL” COHEN, *DOWN AND DERBY: THE INSIDER’S GUIDE TO ROLLER DERBY* 11–12 (2010).

23. CATHERINE MABE, *ROLLER DERBY: THE HISTORY AND ALL-GIRL REVIVAL OF THE GREATEST SPORT ON WHEELS* 21, 31 (2007).

24. *See id.* at 41–48 (briefly chronicling the history of roller derby in the United States from the 1950s to the 1970s).

25. 2 WILLIAM H. YOUNG & NANCY K. YOUNG, *Roller Derby, in* *WORLD WAR II AND THE POSTWAR YEARS IN AMERICA: A HISTORICAL AND CULTURAL ENCYCLOPEDIA* 594, 595–96 (2010).

26. *Id.* at 596.

27. BARBEE & COHEN, *supra* note 22, at 21.

Two network television derby shows featured spandex-clad skaters and scripted violence,²⁸ but each justifiably failed and was mercifully cancelled.

But just as roller derby finally appeared to expire as a mainstream cultural phenomenon, it enjoyed a sudden and rapid revival of a different sort. The rebirth of contemporary roller derby traces to Austin, Texas, where a group of rowdy women gathered and reimagined the sport as a mix between an all-girl, full-contact sport and a chaotic rock-and-roll show.²⁹ The first bouts went off in late 2002, and they set a model that other roller derby leagues around the world would soon imitate.³⁰ The contests between the teams were real rather than staged (as many of the early roller derby bouts had been),³¹ but they were punctuated by outrageous theatrics. Skaters wore sexy costumes,³² announcers mixed sports commentary with comedy, and DJs set the bouts to an edgy punk-rock soundtrack.³³ The resulting spectacle was a perfect fit with Austin's well-known alternative subculture, and similar leagues emerged in other urban centers soon after.³⁴ The next five years saw derby spread explosively. From a mere handful of leagues in 2003, the sport grew to over 440 leagues scattered throughout North America, Europe, and Australia by 2009.³⁵ While derby remains a niche activity, it edges ever closer to the cultural mainstream, as illustrated by the 2009 release of a major motion picture about the sport.³⁶

28. The shows were ABC's *Rock-n-Rollergames* in the late 1980s and TNN's *RollerJam* in the late 1990s. *Id.* at 25–27; MABE, *supra* note 23, at 51, 54–58.

29. In the words of this meeting's organizer, "There's gonna be live music, midgets, fire breathers, and multimedia presentations, all sponsored by bars, that will battle it out through roller derby We're all gonna be superstars!" BARBEE & COHEN, *supra* note 22, at 32–33.

30. *See id.* at 42–43, 52–59 (describing the first public bout in Austin and the spread of roller derby to other parts of the country); MABE, *supra* note 23, at 61, 63, 66 (noting that the 2002 roller derby bouts in Austin created a model for future roller derby leagues); Telephone Interview with Ivanna S. Pankin, San Diego Derby Dolls (Sept. 17, 2010) (observing that AZRD started around the same time as, and independently of, the first Austin-based league); E-mail from Demolicious, L.A. Derby Dolls, to author (Sept. 24, 2010, 10:04 PM) (same for L.A. Derby Dolls).

31. While the in-bout action of present-day, all-girl roller derby has never been staged, twentieth-century derby bouts were often scripted in the same manner as professional wrestling. *See* MABE, *supra* note 23, at 107–09 (describing the athletic character of modern roller derby).

32. Short skirts and fishnets were and are a common combination, leading to the derby-specific contusion known as "track rash" from falling and skidding in such an outfit at high speed. *See id.* at 120 (discussing the variety of injuries that can result from high-speed collisions between masonite and fishnet-clad flesh).

33. MABE, *supra* note 23, at 73.

34. The independent inception of very similar derby leagues supplies a fascinating and puzzling example of harmonic convergence. A roller derby league grew out of the punk scene in Phoenix, Arizona, in 2003, entirely independently of the emergence of derby in Austin. Interview with Ivanna S. Pankin, *supra* note 30. L.A. Derby Dolls began in early 2004, also unrelated to the Texas phenomenon. E-mail from Demolicious, *supra* note 30.

35. BARBEE & COHEN, *supra* note 22, at 71.

36. *See* WHIP IT (Mandate Pictures 2009) (featuring a screenplay by former L.A. Derby Doll Maggie Mayhem (Shauna Cross) and starring several derby girls, including L.A. Derby Dolls Iron Maiven and Krissy Krash). The film enjoyed critical, if not commercial, success. *See Review of*

What explains derby's explosive growth in the past decade? It clearly offers a compelling spectacle. But a demand-side explanation can't account (at least, can't solely account) for the popularity of roller derby in a world already overcrowded with ways to keep people entertained on a Saturday night. One (and perhaps the) major driver of derby's expansion is the women and men who are so drawn to the sport that they devote their spare time and scarce resources to be part of it. So what is the nature of this draw? Derby's constituents are obviously inspired to participate for different reasons, but at least three predominate.³⁷ First, derby can provide a sense of community. The roller derby world is the archetypal close-knit subculture, with all the benefits (*camaraderie*, a sense of belonging) and flaws (insularity, a tendency toward noxious gossip) that such worlds possess. Many skaters join derby leagues because they have just moved to a new locality and are seeking a group of like-minded people with whom to make friends. Second, derby can provide a strong sense of individual identity. As we shall see, becoming part of the derby world often involves inventing a new persona both to reveal to the public in bouts and to use in the derby world. Even when this is not the case, being part of derby can bring out qualities of character excellence in those who can survive the rigors of training. Skaters must conquer fear of injury, learn to engage in and withstand high-speed physical contact, fight through pain and fatigue, and exhibit self-discipline in order to succeed. Finally, derby can provide a taste of fame. Aside from the skaters who hope that it may catapult them to stardom,³⁸ bouts give everyone on the teams a chance to feel like a superstar, if only briefly. For the hour that a bout lasts, derby girls—who are not famous otherwise—get to enjoy the (literal and figurative) spotlight as fans that sometimes number in the thousands cheer them on.³⁹

Independently of the reasons for its resurgence, twenty-first century roller derby shares many essential features with its earlier counterparts—the basic rules of the sport, the presence of female competitors, and a unique blend of serious sport with a campy extravaganza. In several respects relevant to this Article, though, contemporary roller derby is different. First, while earlier incarnations of the sport were often staged (much as profes-

Whip It, ROTTEN TOMATOES, http://www.rottentomatoes.com/m/whip_it/ (indicating an 84% positive rating from critics and a 72% positive rating from viewers).

37. See BARBEE & COHEN, *supra* note 22, at 72–73 (seeking to explain roller derby's appeal).

38. Occasionally, this happens. See *supra* note 36 (discussing L.A. Derby Dolls featured in *Whip It*).

39. The L.A. Derby Dolls regularly sell out their 1,700 person venue. John Rogers, *Roller Derby a Smash Hit with Teen Girls*, L.A. DAILY NEWS (May 30, 2011), http://www.dailynews.com/news/ci_18171277. Seattle's Rat City Rollergirls compete in Key Arena, while the Minnesota Rollergirls and Portland's Rose City Rollers play in front of many thousands of fans in large urban arenas. See Hurt Reynolds, *Rat City Breaks Modern Attendance Record*, DERBY NEWS NETWORK (June 7, 2010), http://www.derbynewsnetwork.com/2010/06/rat_city_breaks_modern_attendance_record (reporting that the Rat City Rollergirls had over 6,000 people in attendance for their championship match).

sional wrestling matches are), modern roller derby involves real, unscripted competition between teams of skaters.⁴⁰ Second, while twentieth-century derby was (or at least always aspired to be) professional, today's roller derby is not.⁴¹ To the contrary, skaters usually have to pay league dues in order to participate. This feature dovetails with derby's all-inclusive air, where the criteria for membership are a willingness to work hard and a desire to be part of a community rather than pure athletic ability.⁴² Third, while historical derby tended to be coed, modern derby is almost exclusively an all-female sport.⁴³ Fourth, while derby's appeal is increasingly broad, it has existed primarily as an alternative subculture—a counterculture, really—rather than as a mainstream phenomenon. Indeed, what draws many of its participants is that derby is a way of creating community and competing athletically that is also adamantly anti-mainstream.⁴⁴ Finally, and most importantly for this project, modern roller derby skaters compete not under their birth names, but under colorful pseudonyms that reflect and constitute the sport's campy, punk aesthetic.

B. The Origins and Meaning of Derby Names

Nicknames are common in all sports, but contemporary women's roller derby has taken this to a new level by publicly identifying skaters almost exclusively by means of facetious pseudonyms called "derby names" or "skate names." An ideal derby name typically has three components: it sounds something like a real name (i.e., has a plausible first name—last name

40. Spectators often leave bouts wrongly thinking that the action is scripted (like pro wrestling), which is a testament to how compelling derby can be. Derby promoters often feel obligated to explain to viewers that the sport is not staged. See MABE, *supra* note 23, at 107–08 (rebutting the suggestion that contemporary all-girl derby bouts are staged).

41. At least, not yet. Many (though not all) derby girls have expressed enthusiasm about the possibility of the sport becoming professional. Telephone Interview with The Boogiewoman, San Diego Derby Dolls (Sept. 1, 2010) (observing that many skaters have interest in converting derby from an amateur to a professional sport).

42. See BARBEE & COHEN, *supra* note 22, at 72 ("Roller derby . . . welcome[s] everyone, regardless of their athletic ability."). This is not to say that any woman who applies will automatically make a team. Lack of commitment or sufficient skill will disqualify "fresh meat" skaters who want to compete in any league. But the standards for inclusion are not as cutthroat as purely competition-oriented sports, as illustrated by the rarity with which skaters who make a team are cut, even when they are past their prime and ineffective.

43. There are men's roller derby teams, such as the New York Shock Exchange and the Harm City (Baltimore) Homicide, but they are by far outnumbered by women's teams. Compare *Men's Roller Derby Leagues*, MEN'S ROLLER DERBY ASS'N, <http://www.mensderbycoalition.com/leagues/> (listing nineteen official men's leagues and nineteen other men's leagues that are not yet members of the Men's Roller Derby Association), with *Member Leagues*, WOMEN'S FLAT TRACK DERBY ASS'N, <http://wftda.com/leagues> (listing 133 women's full Women's Flat Track Derby Association (WFTDA) member leagues and noting that there are 68 apprentice leagues not yet members of the WFTDA). There are, however, many hundreds of derby dudes who contribute to the sport's success by announcing, helping with tech, or refereeing bouts.

44. The original Texas derby girl Sparkle Plenty described this phenomenon: "I think [derby] girls across the world were looking for something non-traditional Not just scrapbooking." BARBEE & COHEN, *supra* note 22, at 72.

construction), it connects to derby in some meaningful way (i.e., it suggests that the skater is fierce, fast, or tough), and it creates some sense of an overall persona.⁴⁵ L.A. Derby Dolls blocker Tara Armov furnishes an example of a derby “A-name.” “Tara” is a standard woman’s first name, while “Armov” is a plausible-sounding last name. The name also suggests that Tara is tough enough that she’ll tear your arm off.⁴⁶ And the vaguely Slavic overtones of her moniker suggest an Eastern Bloc motif that Tara plays up by using faux Cyrillic lettering on her helmet.⁴⁷

The practice of using pseudonyms has created a patchwork of derby names that are simultaneously fierce and funny. Derby names may refer to great actresses (Grace Killey, Sophia LoRenegade), not-so-great actresses (Gori Spelling), or miscreant heiresses (Paris Killton).⁴⁸ Pseudonyms invoke ancient art (Venus de Maul’r) and pop culture (Killo Kitty) alike. Skaters name-check favorite bands (Joy Collision) or musicians both popular (Beonslay) and niche (Stiv Skator⁴⁹). Multiple monikers may reference the same public figure (Kristi Yamagotcha, Kristi Imahootchie). Some names don’t refer to people or things but are just amusing puns (Anne R. Kissed, Anna Notherthing). A skate name may refer back to derby itself (Helen Wheels, Axles of Evil). Names can emphasize a skater’s fierceness (Eva

45. As this suggests, not all derby names are created equal. See Interview with Mila Minute, L.A. Derby Dolls, in L.A., Cal. (Apr. 9, 2010) (separating names into “A,” “B,” and “C” echelons of quality). This leads to the (largely but not completely tongue-in-cheek) phenomenon of “name envy.” See, e.g., Posting of Michi-chan to roller_girls@yahoo.com (Aug. 29, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/24109 (“If I had a skate name like that (Hell O’Kittie), I would guard it with my life.”).

46. To my knowledge, Tara has never actually done this, though some commentators have suggested that she would try to eat opposing skaters alive. See DF, *Blood & Fishnets: L.A. Derby Doll Championship Bout @ the Doll Factory*, 12/8/07, LOSANJEALOUS (Dec. 11, 2007), <http://www.losanjealous.com/2007/12/11/blood-fishnets-la-derby-doll-championship-bout-the-doll-factory-12807/> (conjecturing that “if eating opposing jammers alive were a legal move, Tara would happily resort to this tactic”).

47. It also provides a nice corollary-name option for her spouse, who goes by Busta Armov. See *Meet the L.A. Derby Dolls*, L.A. DERBY DOLLS, <http://elpueblo.derbydolls.com/la/meetthedolls/referees/busta.html> (introducing Busta Armov).

48. The celebrities who are name-checked by derby girls have not, to my knowledge, complained about the unauthorized plays on their names. Tori Spelling has actually reached out to Gori Spelling and seems enthusiastic about having a derby doppelganger. See Bill Horn, *Bill Horn’s Photo*, LOCKERZ, <http://plixi.com/p/35318739> (displaying a picture of Tori smiling and posing with Gori). There are counterexamples, such as Starbucks Coffee’s threat to sue the Rat City Rollergirls for employing a very similar logo to the java leviathan. *Logo Dispute: A Whip Forward*, SEATTLE POST-INTELLIGENCER (May 29, 2008), <http://www.seattlepi.com/local/opinion/article/Logo-Dispute-A-whip-forward-1274888.php>. After an outpouring of public criticism, Starbucks dropped the threat of suit without filing a complaint. Jonah Spangenthal-Lee, *Starbucks Backs Off, Leaving Rat City Rollergirls Logo Intact*, STRANGER (Sept. 18, 2008, 3:00 PM), http://slog.thestranger.com/2008/09/starbucks_backs_off_rat_city_rollergirls. Frito-Lay also opposed a trademark application filed by Crackerjack of the Mad Rollin’ Dolls (Madison, Wisconsin), about which I’ll say more later. See *infra* note 190 and accompanying text.

49. Stiv’s name refers to the late Stiv Bators, front man of the early punk outfit The Dead Boys. See generally Obituary, *Stiv Bators*, 40, *Singer with Dead Boys Band*, N.Y. TIMES, June 6, 1990, at D23.

Destruction, Anita Kill) or downplay it (Sparkle Plenty). Some derby sobriquets could function easily as porn names (Tae Kwon Ho), a few are outright gynecological (Vulvarine), and still others are just gross (Emma Rhoids). Political events both happy (Paris Troika) and tragic (Blanche Davidian) may be invoked. A few require a bit of historical knowledge (Reyna Terror) or literary awareness (Penny Dreadful, Madame Ovary) to decode. Derby names may pay homage to the spirit of a place you love (Louise Ze Animal, Fleur de Lethal, Dumaine Attraction⁵⁰). Almost all skate names are in English, but some allude to phrases more familiar to foreign ears (Bette Noir, Fox Sake). Names chosen at the early dawn of derby's resurgence tended to be more abstract and conceptual (Suzy Snakeeyes, Tawdry Tempest), while a few are simply inscrutable (Lux, V. Lee). My personal favorite is Raven Seaward of the L.A. Derby Dolls, whose name was inspired by the television show *Arrested Development*.⁵¹

While possible to trace the rebirth of derby to a particular place and time, the origin of the practice of skating under pseudonyms remains somewhat more difficult to identify. The first Austin bout featured invented names, and participants had been using them long beforehand during the lead-up to public competition.⁵² Nicknames had also been a familiar—though not pervasive—part of twentieth-century derby.⁵³ Legendarily fierce 1960s skater Ann Calvello was famed as the “Demon of the Derby.”⁵⁴ More importantly, though, the notion of competing under derby names was a perfect fit with the recent reimagination of the sport as a punk-rock spectacle that allowed, and encouraged, participants to develop outrageous public personas. The practice of using skate names has at least as much to do with happenstance, though, as conscious design. Derby pioneer Ivanna S. Pankin's classic derby name predated her founding of Arizona Roller Derby in 2003. Rather, it was a handle and e-mail address she used as a musician in Phoenix's punk-rock scene.⁵⁵ When she publicized her nascent roller derby league using the alias Ivanna S. Pankin, and Austin skaters were already using skate names, the leagues that popped up in their wake followed suit

50. It is not a coincidence that all of these women skate for the New Orleans Roller Girls, who have to an unusually high degree expressed their support for the post-Katrina comeback of their city with their derby names. Telephone Interview with Louise Ze Animal, New Orleans Rollergirls (May 17, 2010).

51. See *5 Tips on How to Create Your Roller Derby Name*, CAROLINE ON CRACK (July 13, 2010), <http://www.carolineoncrack.com/2010/07/13/la-derby-dollsroller-derby-names/> (quoting Raven as saying, “Granted, not everybody understands the true genius of this name the first time they read it, but the look on people's faces when it finally comes together is priceless”). Get it?

52. BARBEE & COHEN, *supra* note 22, at 33.

53. See *id.* at 18–19, 21 (describing the rivalry between Midge “Toughie” Brashun and Gerry Murray, and the development of skater personalities such as Joanie “Blonde Bomber” Weston and Ann “Demon of the Derby” Calvello).

54. See MABE, *supra* note 23, at 52–53 (discussing Calvello's legendary and colorful career).

55. See Interview with Ivanna S. Pankin, *supra* note 30 (recounting the origins of her derby name).

and also used aliases.⁵⁶ The practice of using colorful nicknames has been used by virtually all derby leagues and skaters since.

Nicknames are more than just an amusing quirk of roller derby subculture. They serve a variety of practical functions for fans and skaters alike. From a fan's perspective, the use of fanciful skate names sets derby apart from other sports competitions. The dark irony and overtly violent references communicated by many derby names combines with the sport's punk aesthetic to enhance the countercultural appeal of derby and the spectacle that surrounds a bout. After all, it's easier to imagine "Jenna Cyde" or "Celia Fate" as vicious, hard-hitting derby demons than "Jane Smith" or "Sally Jones." Using fanciful skate names also communicates that while derby is a serious athletic competition, it is unlike most mainstream American sports in that it still manages to maintain a sense of humor about itself.⁵⁷ Indeed, derby names are often the most identifiable and memorable part of bouts for first-time viewers.⁵⁸

Derby pseudonyms are at least as important to the skaters who adopt them as they are to the viewing public.⁵⁹ First, nicknames serve a simple, trademark-like function of facilitating derby girls' notoriety to the viewing public by differentiating skaters from one another. Derby names are, in this sense, like individual brand names that allow fans to tell skaters apart and more readily link their exploits on the track to an articulated identity. Obviously, standard government names can serve this function as well, but derby names are often particularly good source identifiers because they are tied to aesthetic features that fill out distinct personas.⁶⁰ And unlike real names (and standard trademarks), derby names also serve an identity-*concealing* function in that they can separate a competitor's derby persona from her real-life identity, obscuring the latter from derby fans and the world more generally. This is important for skaters who have professional careers

56. *See id.* (explaining this phenomenon).

57. Compare, for example, the suffocatingly serious NFL, where players can be fined for excessive celebration, with the short-lived but more free-spirited XFL, where players were invited to use nicknames as formal identifiers. *See, e.g.,* Harvey Araton, *Dash of the XFL Goes a Long Way*, N.Y. TIMES, Jan. 28, 2004, at D1 (discussing Rod Smart, who infamously played with "He Hate Me" emblazoned on his jersey). The approach taken by most derby people toward their sport closely approximates the old Zen saying, "Act always as if the future of the Universe depended on what you did, while laughing at yourself for thinking that whatever you do makes any difference." *See* MIHALY CSIKSZENTMIHALYI, FINDING FLOW: THE PSYCHOLOGY OF ENGAGEMENT WITH EVERYDAY LIFE 133 (1997) (quoting this saying).

58. This is true in part because derby can be a challenging sport to understand; first-time observers may have no idea how points are scored or what strategies are being deployed (said this writer from personal experience).

59. *See* Interview with The Boogiewoman, *supra* note 41 (saying "it's so much more fun" to use pseudonyms than real names).

60. For example, Tara Armov has faux Cyrillic lettering on her helmet and Cherrylicious features cherry decals on her helmet and her face. *See* DF, *supra* note 46 (describing Tara Armov's gear); *Cherrylicious*, #NC-17 (*Captain*), L.A. DERBY DOLLS, <http://derbydolls.com/rosters/fight-crew/7269201> (introducing Cherrylicious).

(law, medicine) in which participating in derby as an extracurricular activity may be looked down on.⁶¹ Relatedly, made-up names can also decrease the chances that overzealous fans (or, more concerningly, stalkers) will be able to identify and track down skaters.⁶²

Second, skate names facilitate skaters' abilities to develop identities within the roller derby world. Many participants are drawn to derby because it provides a welcome contrast to the everyday grind and provides a space that permits them to explore aspects of their personalities that cannot find expression in their daily lives. For these skaters, derby supplies a space for self-discovery and self-expression as well as a fun extracurricular activity. A skate name is often the central vehicle by which this self-expression is effected.⁶³ As one derby girl wrote,

I would hate to have to go by my real name . . . [because] there is a distinct difference between my derby persona (Dread Pirate Robyn) and Elizabeth. Elizabeth is the fat girl who watches way too much reality tv and considers knee-length skirts and shoes in ANY color but black, brown, or white to be too risqué. Elizabeth NEVER wears her hair in wild ways, or dances in public, or does anything to draw attention to herself. The Dread Pirate Robyn usually sports [L]eia buns, owns several miniskirts, and loves her banana yellow 5 inch wedges more than any other shoe ever. Robyn has even been know[n] to go to *gasp* bars and sometimes even dance!⁶⁴

Not all skaters adopt names (and personas) that are at odds with their daily existences.⁶⁵ But even so, derby girls typically invest themselves in the

61. One skater who works as a lawyer explained that when she appears in court, she doesn't want the judge imagining her in skates and fishnets. Interview with Louise Ze Animal, *supra* note 50.

62. See Interview with Hydra, Texas Rollergirls, in Austin, Tex. (June 7, 2010) (discussing the risk of stalkers and explaining that made-up names are a helpful way to shield skaters' identities from them).

63. See Laura A. Heymann, *Naming, Identity, and Trademark Law*, 86 IND. L.J. 381, 397 (2011) (observing that personal names serve associative functions by locating someone's place in a social network). As Heymann notes, "[i]nitiation into other social structures . . . may be accompanied by new names that represent the new associations." *Id.*

64. Posting of Dread Pirate Robyn to roller_girls@yahoogroups.com (Dec. 4, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37773; see also Posting of Circuit Breaker, Suburbia Roller Derby, to roller_girls@yahoogroups.com (Dec. 4, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37777 (following up on Robyn's post by adding, "I AGREE!!! I sometimes forget that I even have a birth name"). Still other skaters prefer derby names because it avoids having to force fans to pronounce their challenging foreign last names (a concern to which this author is very sympathetic). See, e.g., Posting of Minx, Fort Wayne Derby Girls, to roller_girls@yahoogroups.com (Dec. 4, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37765 (resisting the suggestion that skaters should use government names by observing, "Although I'm very proud of my Slovak heritage[,] . . . can you pronounce my last name by looking at it?").

65. See, e.g., Posting of Kat A. Lyst to roller_girls@yahoogroups.com (May 9, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/8802 ("I think your [derby] persona should fit your personality.").

sport and the subculture that surrounds it to an extent that is hard for outsiders to comprehend,⁶⁶ so that their identities (for which their derby names are the repositories) are wound up with derby even if their derby personas are not that distinct from their outside lives. “Your skate name,” observed one derby girl, “becomes part of you.”⁶⁷

Finally, derby names are inextricably bound up with the sense of community that the sport provides for its participants. As we’ll see later, derby girls can’t have their names officially registered until they’ve demonstrated a base level of commitment to their leagues, and often this means that the moment when a derby girl’s name is made official is celebrated as the moment when her inclusion in the derby world is complete.⁶⁸ And once a skater secures a name, it’s how other people in the derby world will refer to her in all settings—not only during bouts, but at practices, social events, and online—so much so that even teammates may not know one another’s real names.⁶⁹ In some cases, skaters come to find that they use their skate name rather than their government name even outside a derby context.⁷⁰ The community-constitutive dynamic is twofold: not only does conferring a derby name make a participant feel like a true derby insider, but the use of derby names demarcates the scope of the derby world itself. You know you’ve left workaday life behind and entered the insular derby community (whether at a practice, a team dinner, or a night out at a bar) when people stop calling you “Jane Smith” and instead refer to you as “Sasha Haughtbich.”⁷¹ For this

66. See BARBEE & COHEN, *supra* note 22, at 116 (“There is no part-time in roller derby.”).

67. Posting of Paris Troika, Tucson Roller Derby, to roller_girls@yahoogroups.com (Mar. 12, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6519; see also Heymann, *supra* note 63, at 385 (observing that names are primary indicators of—albeit separate from—personal identity).

68. See Posting of Ginger Snap, Gotham Girls Roller Derby, to roller_girls@yahoogroups.com (Dec. 22, 2005), available at http://sports.groups.yahoo.com/group/roller_girls/message/3870 (observing that the waiting period “makes the ac[tu]al ‘naming’ so much more exciting and more of an opportunity to go out and celebrate!”); see also Posting of Cat O’Ninetails to roller_girls@yahoogroups.com (Jan. 13, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/4244 (“Now that we have names on the official roster, [our relatively new] league feels much more legitimate.”).

69. Cf. Interview with Ivanna S. Pankin, *supra* note 30 (observing that few derby people know her real name and that most would still call her Ivanna even if she wanted to go by her real name).

70. See, e.g., E-mail from Mighty Aphrodite, Bay Area Derby Girls, to Mighty Aphrodite, Lonestar Rollergirls (Jan. 23, 2006) (on file with author) (“Mighty has become my nom de guerre on and off the (flat) track and the name that has stuck to me like glue.”).

71. It bears briefly noting that a small number of skaters have begun skating under their legal names. See, e.g., Justice Feelgood Marshall, *Killbox Retires (Sort Of)*, DERBY NEWS NETWORK (Dec. 2008), http://www.derbynewsnetwork.com/blogs/justice_feelgood_marshall/2008/12/killbox_retires_sort (announcing and fomenting discussion about the decision of top Detroit Derby Girls jammer Killbox to skate under her legal name instead). Explanations given for this move include a desire to gain personal, rather than pseudonymous, fame and a desire to make derby seem more like other mainstream sports in order to gain a more widespread fan base. Skaters on “Team Legit,” an all-star team composed of skaters from flat-track leagues that competes on banked tracks, skate mostly under their government names, purportedly because they want to distance themselves from the theatricality of old-school (staged) banked-track derby. Interview with Hydra, *supra* note 62.

reason, the name registration system described in more detail below has always been explicitly limited to “all-girl, skater owned & operated, DIY, punk-rock style leagues.”⁷²

II. The Master Roster: IP Norms Governing Roller Derby Names

A. *Derby Names as IP: The Desire for Name Exclusivity and the Need for Regulation*

Derby girls have created a distinctive subculture, and their names both vivify this subculture and locate their place in it. But even though derby names are theoretically unlimited, skaters frequently choose names that turn out to be identical (or very similar to) ones that other derby girls have thought of first.⁷³ Countless skaters have likely thought of the outstanding name “Princess Slay-Ya,” for example, but it was first used by (and thus exclusively belongs to, for reasons we shall shortly see) one of the Kansas City Roller Warriors.⁷⁴ One might suppose that because derby comprises a basically decent community where people share common interests and make close friends, there would be no objections if other skaters decided to use names identical or very similar to preexisting ones.

Nope. However much derby may embody communal sharing norms in many respects, name usage represents a glaring exception. Derby girls react with anxiety and rancor to the discovery that others have sought to skate under names similar to theirs.⁷⁵ Name repetition, and even similarity,

Some of Team Legit’s skaters, though, compete under invented, but realistic, names because they still prefer to separate their real identities from their derby personas. *Id.*

Derby girls skating under their birth names remain a small minority. See Posting of Grand Poohbah to roller_girls@yahoogroups.com (Dec. 3, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37760 (observing that the trend toward real names is weak because only “[o]ne league’s travel team, and perhaps about ten random skaters from other leagues around the country[,] have switched to ‘real names’”).

72. Posting of Hydra, Texas Rollergirls, to roller_girls@yahoogroups.com (June 14, 2005), available at http://sports.groups.yahoo.com/group/roller_girls/message/1385.

73. See Interview with Ivanna S. Pankin, *supra* note 30 (explaining that overlapping names arise from unintentional coincidence, not intentional “name theft”). The problem of overlapping names is almost always a product of what copyright law calls independent creation, rather than intentional copying—despite frequent accusations of “name theft.” See, e.g., Posting of Kylie McLeod to roller_girls@yahoogroups.com (Feb. 3, 2010), available at http://sports.groups.yahoo.com/group/roller_girls/message/38238 (discussing “the shame of using a stolen name”). Most skaters appear to recognize this. See, e.g., Posting of Fighty Irish to roller_girls@yahoogroups.com (Feb. 22, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/5789 (“[I] thought [I] ‘came up’ with ‘Estee Slaughter.’ [I]t’s been done (congrats on that one!) . . . [G]oddamn collective consciousness[.]”). I suspect they invoke the term *theft* simply to access the moral gravity of property rights, not because they think someone has actually copied their names.

74. See Elaina B. & Soylent Mean, *International Rollergirls’ Master Roster*, INT’L ROLLERGIRLS’ MASTER ROSTER, <http://www.twoevils.org/rollergirls/> [hereinafter *Master Roster*] (listing “Princess Slay-Ya” as a registered derby name).

75. This conclusion not only confounds one’s likely guess about how derby girls would operate; it also lies in contrast to how other groups informally regulate their IP. See Loshin, *supra* note 11,

triggers rage in skaters who feel they have superior rights in their derby aliases: “When you bite on someone’s style you look like a douche and so uncool. . . . Just imagine finding out at 2:30am in a bar when you are not completely sober that the person you are talking to has an almost identical name as yours. . . . [It’s] SUPER ANNOYING”⁷⁶

Another window into the seriousness with which some roller girls take their names is the intensity with which many skaters pester those in charge of registering names with demands, objections, and concerns about possible infringing names.⁷⁷ Name conflicts have resulted in serious animosity, harassment,⁷⁸ and even intimations of violence.⁷⁹

These reactions may seem puzzling to those outside the derby world. After all, derby is characterized by a collaborative spirit that seems at odds with these highly individualistic and exclusive claims to skate names. If

at 136–37 (observing that sharing secrets about illusions is a central feature of the informal norm system that magicians have created to govern their professional subculture).

76. Posting of Cheap Trixie to roller_girls@yahoogroups.com (Feb. 22, 2006), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/5745; *see also* Posting of Magenta Mortuary to roller_girls@yahoogroups.com (Aug. 17, 2008), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/32095 (complaining forcefully about another skater’s being registered as merely “Magenta”).

77. *See* Posting of Soylent Mean, Minnesota Roller girls, to roller_girls@yahoogroups.com (Oct. 9, 2007), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/25298 (“[A]bove all else—please be respectful of all the time that Paige, Jelly and I put into the master roster. Sending us emails, calling us, or spamming our MySpace page because you personally sent your very own name two days ago and *how dare we not have the roster updated yet* . . . well, it’s just not appreciated.”); *see also* Telephone Interview with Soylent Mean, Minnesota Roller Girls (May 12, 2010) (describing the vitriol with which roller girls complain about name infringement).

78. *See* Posting of Hydra, Texas Roller girls, to roller_girls@yahoogroups.com (June 23, 2005), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/1463 (“I’ve heard of regular, brutal ha[r]assments as well. . . . It’s not cool & people get PISSED! Believe me, I know.”).

79. Some of these threats are clearly facetious. *See, e.g.,* Posting of Fighty Irish, Bay Area Derby Girls to roller_girls@yahoogroups.com (Feb. 22, 2006), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/5732 (“[I] will defend both ‘Fighty’ and ‘Irish’ to the death. ‘[F]resh meat’: you’ve been warned. . . .”). Other indications of name disputes leading to possible physical altercations appear more serious. *See, e.g.,* Posting of Ivanna S. Pankin to roller_girls@yahoogroups.com (Jan. 23, 2006), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/4493 (recounting that L.A. Derby Dolls’s Juana Beat’n and Arizona Roller Derby’s Jojuanna Beatin “were starting to make plans to meet behind the bike racks over their names”).

Not all derby girls care this much about the uniqueness of their names. *See, e.g.,* Posting of Minimum Rage, Denver Roller Dolls, to roller_girls@yahoogroups.com (Feb. 6, 2010), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/38269 (“Some skaters are more open to having someone with a name close to their own and some are not at all. It completely depends on the skater—I’ve seen it go both ways.”); Posting of Nameless Whorror, Montreal Roller Derby, to roller_girls@yahoogroups.com (Dec. 7, 2009), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/37814 (noting that while the Master Roster had registered the very similar name “NameLes,” Nameless Whorror “personally do[es] not mind . . . but can understand how it can be annoying”). Indifference to overlapping name use is likely the exception rather than the rule. *See, e.g.,* Posting of Killer Vee to roller_girls@yahoogroups.com (Aug. 19, 2008), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/32141 (rejecting the suggestion that names need not be unique by saying, “Pfffffft. I’m keeping my name and I want it all for myself!”).

derby girls think of each other as sisters, why wouldn't this share-and-share-alike goodwill transfer over to name usage? Moreover, unlike many other intangible goods, derby names have no market value⁸⁰ and require expending only some trivial transaction costs to acquire. And the geographic dispersion of derby leagues appears to obviate any concerns about confusion, at least in many cases. Finally, one might think that a skater who discovers that her moniker is already in use would prefer to avoid any conflict and just select one of the other theoretically infinite skate names that one can imagine. In light of all this, the question remains: Why would a skater in, say, Kansas City object to a skater in Boston or San Diego using the same pseudonym in the context of a mere extracurricular activity?

Derby girls care about maintaining the uniqueness of their aliases for three primary reasons. First, names in derby function as trademarks do in the commercial world: they ensure that skaters will not be confused with one another and that the viewing public can tell skaters apart.⁸¹ This is particularly true in the context of actual bouts, when announcers rely on derby names to relay action to spectators over a public-address system. Particularly given the chaotic nature of the typical derby jam, having skaters with similar or identical names on the track at the same time would be impossibly confusing for announcers and fans alike.⁸² And it may initially seem that the likelihood of confusion would be small given the wide array of possible names and the vast number of derby girls throughout the nation, and indeed,

80. No norms or rules stop derby girls from selling one another their names, but no evidence indicates that this has ever happened. There are some examples of skaters donatively transferring their names to one another, though. See, e.g., E-mail from Fightsy Almighty, L.A. Derby Dolls to masterroster@gmail.com (Nov. 18, 2008, 11:42 AM) (on file with author) (bestowing ownership of the name Ruby Bruiseday on another skater); Interview with Mila Minute, *supra* note 45 (noting that Mila was given her name by Leia Mout). In an interesting twist, one roller girl posted on the Yahoo! board, cryptically saying that she had thought of a great but still unregistered skate name and that any deserving and interested skaters should e-mail her so she could disclose it to them. See Posting of Sasha Haughtbich, Tampa Bay Derby Darlins, to roller_girls@yahoo.com (Aug. 19, 2008), available at http://sports.groups.yahoo.com/group/roller_girls/message/32148 ("I have a name that I've been sitting on for almost 2 years now and still love—no one has it even still, so if you're looking for a good name or know someone who is, send me an email . . ."). What is interesting about this is that she did not simply post the name for all to see and use, but wanted to keep control over it, not so that she could sell it, but so that she could make sure the name went to good use. *Id.* Also, a number of roller girls have publicly sought suggestions for their names, often producing numerous promising options. See, e.g., Posting of Soylent Mean, Minnesota Roller girls, to roller_girls@yahoo.com (Jan. 24, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/4527 (commenting on a thread that was seeking robot-themed derby names and that produced tens of suggestions, including the immortal "Terminate Whore").

81. Cf. Barton Beebe, *The Semiotic Analysis of Trademark Law*, 51 UCLA L. REV. 621, 625 (2004) (differentiating between "source distinctiveness," which describes the identification of a mark with its source, and "differential distinctiveness," which describes the separation of marks from each other).

82. See Interview with Soylent Mean, *supra* note 77 (describing this problem with names that are spelled differently but sound the same); see also, e.g., E-mail from Isabelle Ringer, San Diego Derby Dolls, to author (Feb. 11, 2011, 3:29 PM) (relating an e-mail exchange in which she declined to give Izabelle Ringer of the Rose City Rollers permission to register her name).

the world. But as competition becomes increasingly interleague, with regional and national competitions frequently sanctioned by the international Women's Flat-Track Derby Association (WFTDA), the chances that two identically named skaters in leagues thousands of miles apart could skate against one another no longer seem so slim.⁸³ This concern also arises outside the context of competition. Major tournaments will draw derby girls from all over just as spectators, and the annual RollerCon tournament is only one instance of the many large-scale social events that bring together skaters and derby aficionados from around the country, raising the likelihood that name confusion could occur.⁸⁴

Second, and probably more importantly, though, skaters care about the uniqueness of their names despite their lack of discernible market value because skate names are a repository for the identities that skaters work so hard to create in a subculture that is profoundly important to them. As we have seen, skaters use their names as the focal point around which their subcultural identities are built, so that their competitive style and derby personality are associated with their name.⁸⁵ Using a skater's preexisting name—or even using a name very similar to a skater's preexisting name—effects a dignitary harm on several levels. First, it may detract from the hard-earned social capital that a skater has built up within the derby world, even where the senior skater's fame is sufficiently strong that no one is likely to confuse the junior skater with her. Second, overlapping name use violates one of the central tenets of the derby world, the “don't be a douchebag rule,”⁸⁶ so that not honoring the uniqueness of a preexisting skate name communicates disrespect in the same way as an intentional, if costless, trespass to land.⁸⁷ “It's the principle,” explained one rollergirl, “that you don't steal other people's shit, whether it be a stamp off your desk at work (don't ask) or

83. See Posting of Paris Troika, *supra* note 67 (“[N]ow that we've had a national tournament and these types of events are going to get even more common . . . the last thing you want is two chicks with the same name skating in a championship or something.”).

84. See Posting of Tara Armov, L.A. Derby Dolls, to roller_girls@yahoogroups.com (Mar. 11, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6518 (“Just wait until you get to Rollercon or any other large gathering of rollergirls . . . you'll see why firsthand the suggestion of geography keeping everyone distinct won't work!”).

85. See *supra* notes 59–72 and accompanying text.

86. Despite appearances, the “don't be a douchebag” rule is a pervasive principle within the derby community that is taken very seriously. It expresses the importance of basic consideration—especially that skaters should not put their own personal concerns ahead of the well-being of the derby community at large—in a way consistent with derby's punk-rock attitude. See Telephone Interview with Hurt Reynolds (Aug. 2010) (discussing the rule); see also, e.g., BARBEE & COHEN, *supra* note 22, at 204 (quoting Charm City Roller Girl Dolly Rocket admonishing league-switching skaters, “DON'T be a douche”).

87. See, e.g., *Jacque v. Steenberg Homes, Inc.*, 563 N.W.2d 154, 166 (Wis. 1997) (affirming a trial court punitive damages award of \$100,000 for a “brazen” but costless trespass to land); cf. Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1851 (2007) (“‘No punching’ is the direct analogue of ‘No taking.’”).

a derby name.”⁸⁸ Finally, names are typically a product of careful thought and effort, so that they express not just the holder’s identity, but also her cleverness.⁸⁹ Having multiple skaters use the same sobriquet dilutes that sense of ingenuity by making it seem commonplace.

Third, the gravity with which name infringement is treated in the derby world may seem puzzling because derby nicknames are theoretically infinite, so that overlap need only spur skaters to pick a new one from an inexhaustible commons. In other words, the derby name problem initially appears to be a pure coordination game,⁹⁰ whereby skaters simply want to make sure they all choose separate, but equally appealing, aliases. But this doesn’t work for a couple reasons. First, many skaters contest whether derby names actually do comprise an inexhaustible commons.⁹¹ Newer rollergirls in particular often complain that with existing names numbering in the five figures, it’s often necessary to think of many possible nicknames before finding one that is unclaimed, so that newer skaters often have to settle for a sixth-choice skate name.⁹² Second, not all names are created equal. Even if there is an infinitude of possible names, only some of those names will suit a skater’s personality and style, so that a world in which skate names must be unique

88. Posting of Cyn Vicious, Gem City Rollergirls, to roller_girls@yahoogroups.com (Feb. 21, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/5726.

89. See, e.g., Posting of Dolly Destructo, Toronto Roller Derby, to roller_girls@yahoogroups.com (June 21, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/22067 (identifying the wittiness of her team’s name—“Chicks Ahoy!”—as one of the reasons that its protection is important to her).

90. See Andrew M. Colman, *Salience and Focusing in Pure Coordination Games*, 4 J. ECON. METHODOLOGY 61, 61 (1997) (“The defining property of a pure coordination game is complete agreement among players’ utility functions. In such a game the players['] . . . interests are not in conflict: the players are motivated solely to coordinate their strategies in order to obtain an outcome that is best for both (or all) of them.”).

91. Compare Posting of Jelly HoNut to roller_girls@yahoogroups.com (July 26, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/23228 (“By the end of this week the international roster will exceed 9000 names. Lack of creativity is not the main issue; it’s difficult for our new sisters to not only find a name they like and that’s appropriate for the sport, but also to find one that’s unique enough to satisfy the masses.”), with Posting of Fishnet Funeral, Inland Empire Derby Divas, to roller_girls@yahoogroups.com (July 27, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/23265 (“[Two thousand] plus names do not excuse lack of creativity. [A]re there only a few thousand names in the world to name 4 billion people???? [N]ope. Look at my name for instance . . . fishnets and death stuff are the foundation of new derby . . . and [I] was the first one, as of seven months ago . . . to even have a name with fishnet in it.”).

92. Interview with The Boogiewoman, *supra* note 41 (observing that a lot of newer skaters are competing under names they are not excited about because of scarcity). Many older-school skaters respond that this concern is baseless and that newer skaters have unique advantages, such as making reference to cultural personas or phenomena that did not exist at the dawn of contemporary derby’s resurgence. See, e.g., Interview with Ivanna S. Pankin, *supra* note 30 (disagreeing with this concern and noting that derby girls were complaining that all the good names had been taken back when the Master Roster was first created).

may well cause a newer skater to experience a much lower chance of being able to claim a name that truly suits her.⁹³

So while derby name regulation may initially appear to be a solution to a mere coordination game where the goal is simply to make sure that there is no overlap between equally appealing choices,⁹⁴ it's actually closer to a competition game akin to the prisoner's dilemma.⁹⁵ Not all names are created equal, so requiring skaters to defer to preexisting chosen names may require them to forgo one or even several strongly preferred names, ending up instead with their second or even seventh choice.⁹⁶ For many skaters, then, the best individual choice from a purely selfish perspective would be to deviate from the name-uniqueness norm and grab whatever name they want (even if it's already in use), while everyone else respects the rules (so that there's no threat of someone infringing the defecting skater's chosen name).⁹⁷ But in practical terms, defection tends to be a bad strategy because it threatens a cascade of noncompliance that could lead to countless skaters sharing the same name and to general chaos and dissension in the derby world. Derby girls tempted to defect thus still tend to comply with the derby-name-uniqueness norm as a second-best strategy that assures them that while they may not be able to have their ideal name, they can at least be confident that when they find a reasonably agreeable, unclaimed name, it will be theirs alone.⁹⁸

93. See Interview with The Boogiewoman, *supra* note 41 (describing how she originally wanted the derby name "Abra Cadaver," but it had already been registered).

94. The classic example of a pure coordination game is the U.S. rule for driving on the right side of the road. Drivers are largely indifferent to which side of the road they drive on, so rules requiring driving on the right have the Pareto optimal effect of avoiding accidents while costing drivers nothing.

95. See Steven Kuhn, *Prisoner's Dilemma*, STAN. ENCYCLOPEDIA OF PHIL. (Oct. 22, 2007), <http://plato.stanford.edu/entries/prisoner-dilemma> (observing that the prisoner's dilemma "illustrates a conflict between individual and group rationality" in that "[a] group whose members pursue rational self-interest may all end up worse off than a group whose members act contrary to rational self-interest").

96. See Interview with The Boogiewoman, *supra* note 41 (lamenting this outcome in particular for newer skaters).

97. Because skaters may strongly prefer one name to another and because there is not an infinite number of equally good names available, requiring them to defer to name-uniqueness norms is not Pareto optimal. Individual preferences on this point vary to some extent. Many skaters may not want to take a name that is already in use, but others appear not to care, perhaps because the appeal of the name to them is sufficient to overcome its lack of uniqueness. See, e.g., E-mail from Isabelle Ringer to author, *supra* note 82 (explaining that Isabelle Ringer of the Rose City Rollergirls wanted to keep her name even though she was aware that Isabelle Ringer had registered and used it first).

98. See, e.g., Posting of Panic Attack, B.ay A.rea D.erby G.irls, to roller_girls@yahoogroups.com (Mar. 11, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6520 ("If need be, find a new [name]. It's not that hard. BUT . . . don't get all muffled if someone who's established calls you out for a similar name. . . . Come up with as many names as you can, use the ole control F trick on the [Master Roster] to search names and go from there.").

B. The Master Roster and Beyond: How Norms Regulate Derby Names

Assuring exclusive use of skate names is a problem, but it's one for which the law provides plausible solutions. Derby names are at least plausibly subject to IP protection under federal and state law. In fact, the trademark provisions of the federal Lanham Act seem designed to address roller girls' precise concerns, namely that other skaters will create confusion about or dilute their performance identities.⁹⁹ While federal protection for government names is generally not permitted,¹⁰⁰ this concern does not apply to stage names, which are generally considered valid subject matter of trademark law.¹⁰¹ Even without registering their names with the Patent and Trademark Office (PTO), skaters may well enjoy common law trademark protection for their name,¹⁰² albeit limited to the geographical area within which they have used the name in connection with their persona.¹⁰³ Indeed, several derby girls have successfully trademarked their names as service marks.¹⁰⁴

Skaters may also be able to deploy laws prohibiting unfair exploitation of identity to prevent other derby girls from competing in ways that unfairly trade on their preexisting identities. If a new skater began competing pub-

99. See Lanham Act § 32, 15 U.S.C. § 1114 (2006) (providing remedies for infringement of registered marks); *id.* § 43(a), (c), 15 U.S.C. § 1125(a), (c) (prohibiting infringement of both registered and unregistered trademarks on a confusion-based theory and prohibiting dilution of "famous" marks).

100. See *id.* § 2(e)(4), 15 U.S.C. § 1052 (barring trademark registration for any mark that "is primarily merely a surname").

101. 1 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 7:18, at 7-42 (4th ed. 2011) ("[P]seudonyms and nicknames of living individuals may be protected against commercial appropriation."); see, e.g., *Hirsch v. S.C. Johnson & Son, Inc.*, 280 N.W.2d 129, 130 (1979) (upholding the registration of the "Crazylegs" nickname for former football star Elroy Hirsch).

102. See Lanham Act § 43(a), 15 U.S.C. § 1125(a) (enabling recovery even for infringement of unregistered marks). Derby names would likely be service marks rather than trademarks because skaters are not goods. One might also question whether skating under a derby name is a use in commerce, since derby girls are not paid to skate. But since derby is a money-seeking business (although often not a very profitable one), and "use in commerce" has been broadly defined "according to the customary practices of a particular industry," *Planetary Motion, Inc. v. Techplosion, Inc.*, 261 F.3d 1188, 1198 (11th Cir. 2001), skating under a derby name likely falls within this capacious understanding of the term.

103. See *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97-98 (1918) (holding that common law trademark rights are limited to the geographical area within which they have been used in connection with the appurtenant goods or services). Registering skate names with the PTO would earn skaters presumptive nationwide protection of their mark, but this option is somewhat costly (federal registration costs about \$750) and would not allow skaters to enjoin competing uses unless they could show a reasonable likelihood that another skater's use of the same name would cause confusion with their derby identity. See *Dawn Donut Co. v. Hart's Food Stores, Inc.*, 267 F.2d 358, 364-65 (2d Cir. 1959) (holding that a court will not issue an injunction under the Lanham Act against an infringing use by a defendant who adopted the mark in good faith in a remote geographic area unless the plaintiff shows intent to use the mark in that area).

104. For example, Ivanna S. Pankin of the San Diego Derby Dolls registered her derby name as a service mark in connection with "[e]ntertainment services, namely, participation in roller derby," effective May 4, 2010. IVANNA S. PANKIN, Registration No. 3,783,638.

licly under the name of a preexisting, famous skater, that would fairly clearly amount to a “false designation of [the] origin” of the services.¹⁰⁵ People would think they were seeing the famous skater but would actually be seeing some novice interloper, and federal law provides a civil cause of action against such false attribution.¹⁰⁶ Many states also have right-of-publicity laws preventing unauthorized use of another’s identity.¹⁰⁷ Taking a prior skater’s name would implicate these statutes as well, assuming that the subsequent skater attempted to copy the persona of the prior skater exactly, rather than just using general tropes.¹⁰⁸ Bringing suit under either a trademark or right-of-publicity theory would entitle prevailing skaters to both money damages and injunctive relief, so that even if a derby girl could not prove that infringement of her name had caused financial harm, she could at least get a court order preventing the other skater from using it.

And yet the ready availability of formal law as a means of effecting name regulation is not, as one might imagine, the end of this story. On the contrary, it is just the beginning because the roller derby world has eschewed trademark and other IP law almost completely as a means of protecting skate names, turning instead to its own skater-created and -operated system of name regulation and registration. This elaborate, and largely extralegal, system incorporates three different forms of regulation—formal rules, informal norms, and (in some instances) traditional law itself—each of which I describe in turn below.

1. *Formal Rules for Registration and Regulation*

a. Registration.—Assuring the uniqueness of roller derby names requires some shared, public means by which all incoming skaters can ascertain what names are already in use. This was unnecessary at the inception of roller derby’s revival in the early 2000s for two reasons. First, teams were so few and skaters so tightly knit that the odds of name overlap were low,¹⁰⁹ and everyone generally knew whether a proposed name was already

105. Lanham Act § 43(a), 15 U.S.C. § 1125(a).

106. *See id.* § 43(a)(1)(A), 15 U.S.C. § 1125(a)(1)(A) (prohibiting the use in commerce of any false designations of origin and false or misleading description of facts in connection with goods or services).

107. *E.g.*, CAL. CIV. CODE § 3344 (West 1999) (imposing liability for the unauthorized appropriation of elements of another’s personality—including another’s name, voice, signature, photograph, or likeness); CAL. CIV. CODE § 3344.1 (West Supp. 2012) (same for a deceased personality).

108. *See Nurmi v. Peterson*, No. CV-88-5436-WMB, 1989 WL 407484, at *3 (C.D. Cal. Mar. 31, 1989) (denying a right-of-publicity suit filed by an actress playing Vampira against an actress playing Elvira because Elvira was not an exact copy of the Vampira character but only used some similar “props, clothes, and mannerisms”).

109. Though not zero, as the very early conflict between two skaters who wanted to use the name “Trouble” illustrates. *See infra* notes 122–23 and accompanying text.

in use.¹¹⁰ Also, early on, unused derby names were so plentiful that there was no real scarcity. Even as late as 2005, derby folks were so cavalier about name use that they created an online thread listing clever skate names they had thought of in order for others to take.¹¹¹ Within just a few years, however, this changed. First, in a classic Demsetzian transition, skaters became more numerous, names grew scarcer, and skaters ceased to think of them as an inexhaustible commons, instead becoming more covetous of them.¹¹² Second, as the sport grew geographically and in terms of size, there were eventually sufficient skaters dispersed widely enough that word of mouth proved inadequate to prevent name repetition. As demand for names increased, and casual enforcement increasingly failed, derby name regulation godmother and former WFTDA president Hydra stepped in to create the ur-version of what has since become known as the Master Roster.¹¹³ The Master Roster began as a humble Excel spreadsheet that noted the same basic data about names that it still does today: a skater's derby name, the date that the name was entered on the Master Roster, and the skater's team affiliation.¹¹⁴ For a few years, Hydra managed to maintain the Master Roster largely by informal means: skaters would submit names, and Hydra would search the sheet for similar or identical names and register the submitted name if no conflicts arose.¹¹⁵

As derby began to grow from a handful of grassroots leagues into a nationwide phenomenon, though, the sheer volume of name registration became untenable. In late 2005, Hydra handed off the Master Roster duties to a team of skaters—Paige Burner, Soylent Mean, and Jelly HoNut—who shared responsibility for registering submitted names.¹¹⁶ But this method necessitated a time-sucking and often ineffective search process for each name. In early 2006, there were 2,585 registered names on the Master Roster, and the increasing pace of submission required the Roster's

110. See Interview with Ivanna S. Pankin, *supra* note 30 (indicating that in the earliest days of derby, there was so much interchange between the handful of startup leagues that name overlap would never have happened).

111. See Posting of angelravah to roller_girls@yahoogroups.com (Nov. 30, 2005), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/3339 (soliciting name suggestions for an unnamed derby girl and establishing a forum in which users could suggest potential derby names for other users to adopt).

112. See Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. (PAPERS & PROC.) 347, 350 (1967) (arguing that property rights arise as people react to changes in the costs and benefits of using certain resources or taking certain actions).

113. Interview with Hydra, *supra* note 62.

114. *Id.*

115. See *id.* (describing the early name registration process).

116. Posting of Hydra, Texas Rollergirls, to roller_girls@yahoogroups.com (Dec. 28, 2005), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/3916 ("I'm retiring from updating the master roster. Please send everything related to the master roster to Paige Burner . . .").

administrators to release an updated version of the spreadsheet every week.¹¹⁷ Soon after, the administrators released an online version of the Master Roster with a search algorithm that enabled skaters to evaluate whether their proposed name was similar to a preexisting one and even how close the proximity was.¹¹⁸ This new functionality and increased accessibility enhanced the efficiency of name registration significantly, and by late 2007, the number of registered names had already exceeded 10,000.¹¹⁹ This version of the Master Roster remains publicly available online,¹²⁰ and while there are (and have been for some time) movements afoot to supplant it with a newer, better version, it remains for now the dominant, unique means by which roller derby girls can register their skate names.

b. Regulation.—The development of a registry for roller derby names was roughly paralleled by the creation of informal norms that determined basic ground rules determining who could register names and how registration had to take place. From roller derby's earliest recrudescence, skaters understood the basic norm against using preexisting skate names.¹²¹ This did not mean, though, that disputes over name priority did not emerge. On the contrary, the first such conflict emerged between skaters in two of the initial roller derby leagues, Arizona Roller Derby and TXRD Lonestar Rollergirls, pitting against one another two skaters who wanted (aptly enough) to go by the moniker "Trouble."¹²² In the absence of a well-developed regulatory system, as well as disagreement about who had superior rights to the name, both Troubles continued to use the name in an uneasy détente.¹²³

Perhaps spurred on by this and other nascent name conflicts, Hydra circulated a short list of five simple rules that created procedures for registration and reflected the preexisting substantive norms that skaters could not register names that were already in use and that they should contact for permission rollergirls who had names similar to the one they wanted to

117. See Posting of Soylent Mean, Minnesota Rollergirls, to roller_girls@yahoogroups.com (Mar. 3, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6174 (noting that the Master Roster is updated weekly); Posting of Soylent Mean, Minnesota Rollergirls, to roller_girls@yahoogroups.com (Mar. 3, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6186 (announcing that the Master Roster contained 2,585 registered names).

118. Interview with Soylent Mean, *supra* note 77.

119. By late 2007 (the earliest date for which a formal count was available), the number of registered derby names had exceeded 10,000 (with 420 teams). Posting of Soylent Mean, Minnesota Rollergirls, to roller_girls@yahoogroups.com (Oct. 20, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/25593.

120. *Master Roster*, *supra* note 74.

121. See Posting of Paris Troika, *supra* note 67 ("It's just not kosher to copy another girl's name[;] an 'unwritten rule' of sorts.").

122. Interview with Hydra, *supra* note 62.

123. *Id.*

register.¹²⁴ When Paige and Soylent took over the administration of the Master Roster about a year later, they circulated for the derby community's review a much more elaborate series of rules designed to formalize and centralize the substance and procedure of derby name regulation.¹²⁵ In announcing these rules, the Master Roster's administrators observed that the Roster "is put together on a volunteer basis to ensure that all rollergirls feel rewarded for their creativity by maintaining exclusiveness for their names."¹²⁶ These same basic rules persist today, where they find fixed expression on the same website that houses the current Master Roster.¹²⁷ Three core principles govern derby name regulation. First is a uniqueness requirement: only one skater can skate under a given name.¹²⁸ The second instantiates the idea of priority: where two names are identical or excessively similar, the skater with the earlier claim to the name has the right to use it.¹²⁹ The third creates elemental standards for resolving overlapping name conflicts: where two names are reasonably similar, the second skater must ask the first skater for permission to use the name.¹³⁰ This permission must be in writing and submitted to the Master Roster's administrators in order to authenticate it.¹³¹ Names that are very similar to preexisting names but that

124. See Posting of Hydra, *supra* note 72 (creating the thread "master roster guidelines—read them and live them!").

125. Posting of Soylent Mean, Minnesota Rollergirls, to roller_girls@yahoogroups.com (Apr. 27, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/8510 (creating a thread proposing and seeking feedback about name regulation rules); cf. Administrative Procedure Act § 4, 5 U.S.C. § 553 (2006) (establishing procedures for notice-and-comment rulemaking).

126. Posting of Soylent Mean, *supra* note 125.

127. Elaina B. et al., *Master Roster Rules*, INT'L ROLLERGIRLS' MASTER ROSTER, <http://twoevils.org/rollergirls/rules.html> (last updated Sept. 29, 2011) [hereinafter *Master Roster Rules*].

128. *Id.* ("Duplicate and similar league and skater names are *strongly* discouraged, and not allowed without permission from the original skater(s)/league(s).") This rule implies that if two skaters agree to use the same name, overlapping name use would be allowed. There are a handful of examples where two skaters have agreed to use the same name. See, e.g., *Master Roster*, *supra* note 74 (including entries for two skaters registered as "Megahurtz," among other duplicate names).

129. *Master Roster Rules*, *supra* note 127. This principle tracks (although it does not consciously model) the ancient and pervasive property principle of "first in time, first in right." See generally Lawrence Berger, *An Analysis of the Doctrine that "First in Time Is First in Right,"* 64 NEB. L. REV. 349 (1985) (describing the far-reaching legal and cultural significance of the principle).

130. *Master Roster Rules*, *supra* note 127. And this principle tracks (but, again, does not consciously model) the right to exclude, which some scholars have argued is the *sine qua non* of property law. E.g., Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 730 (1998).

131. *Master Roster Rules*, *supra* note 127; see also Posting of Paige Burner, Arizona Roller Derby, to roller_girls@yahoogroups.com (Jan. 27, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/4742 ("[I]f two skaters agree to share a name, then I need to see that agreement in writing from the established skater.").

have been approved via written permission by the senior skater are listed on the Master Roster with the note “(cleared).”¹³²

The Master Roster’s name search feature allows users to determine the degrees of similarity between a proposed name and existing names,¹³³ and this result strongly determines the likelihood that a name will be accepted or rejected. The derby name checker returns one of five results, alerting users that a proposed moniker’s degree of similarity to preexisting ones is either “very high,” “high,” “medium,” “low,” or “very low.” Names of very high similarity are “almost guaranteed to be rejected,” while names of very low similarity are likely to be accepted.¹³⁴ For example, inputting the name “Nurse Wretched”¹³⁵ into the name checker returns the result that the name is identical to a preexisting name (“Nurse Wretched”), of high similarity to another preexisting name (“Nurse Ratchet”), and of low similarity to yet another one (“Wretched”).¹³⁶ This name would almost certainly be rejected by the Master Roster’s administrators. These results are advisory rather than dispositive, though: the administrators retain discretion over the acceptance and rejection of all proposed derby names,¹³⁷ which is particularly salient in cases where a name has a nontrivial degree of similarity to a preexisting one.¹³⁸

The Master Roster’s substantive rules are supported by a number of formal registration procedures. For instance, skaters are advised not to submit a name until they have been participating in derby for at least a couple of

132. *Master Roster*, *supra* note 74; Posting of Monichrome, Toronto Roller Derby, to roller_girls@yahoo.com (Feb. 7, 2011), available at http://sports.groups.yahoo.com/group/roller_girls/message/41639 (“If you have a letter/email from the skater who claimed the name first, and she clears your similar-but-different name, then your name will show (cleared) next to it [on the Roster].”).

133. *Master Roster*, *supra* note 74 (offering users the chance to “[c]heck a new name for uniqueness”). Minnesota Rollergirl Soylent Mean, who works as an IT professional, wrote the code for the derby name checker. Interview with Soylent Mean, *supra* note 77. The code operates by breaking down existing names into their constituent phonetic parts and then comparing those parts with the phonemes in proposed names. *Id.*

134. See *Roller Derby Name Checker: “Nurse Wretched,”* INT’L ROLLERGIRLS’ MASTER ROSTER, <http://twoevils.org/rollergirls/similarity.cgi?name=nurse+wretched> (assessing the similarity of “Nurse Wretched” to preexisting names and finding it too similar and therefore likely to be rejected).

135. This is a derby name suggested by a friend and nurse who occasionally volunteers for the L.A. Derby Dolls.

136. *Roller Derby Name Checker: “Nurse Wretched,”* *supra* note 134.

137. See *id.* (“Please note that passing this test does *not* guarantee that your name will be accepted. Similarly, failing this test is not a guarantee that it will be rejected, but it does raise the chance that it will be.”); see also *Master Roster Rules*, *supra* note 127 (“Even if you meet all name requirements, rejection is still at the discretion of the roster maintainers.”).

138. Despite the Master Roster’s administrators’ formal reservation of authority over name decisions to themselves, much of this authority is delegated to senior-registered skaters, who retain ultimate authority over whether to allow names that are similar, or in some rare cases, identical to their own. See *infra* note 142 and accompanying text; see also *Master Roster*, *supra* note 74 (indicating that senior registrant Ida Stroya formally permitted Ida Stroyder to skate under that highly similar name).

months¹³⁹ in order to avoid wastefully registering a name to beginning skaters who end up dropping out or failing to make a team.¹⁴⁰ The submission of names to the Master Roster is initially organized by a designated skater within each league, a “name wrangler,” who aggregates the names of qualifying new skaters, vets them for validity, and submits them in batches to the Master Roster administrators.¹⁴¹ Priority in cases of identical submissions is determined by the date stamp on the e-mail received by the Master Roster’s administrators. In other words, registration is a matter of filing priority, not actual use, so that if two skaters simultaneously seek to register the same name, the Master Roster’s administrators will register the first submission they receive, regardless of which skater adopted the name first.¹⁴²

The process of adding names to the registry raises a correlative problem: what to do with names of skaters who have quit or retired? This problem looms more and more as the number of derby girls grows ever larger and names grow ever scarcer. Skaters (and name wranglers) are encouraged to notify the Master Roster’s administrators when they are no longer using their names,¹⁴³ and leagues often submit lists of names to the Master Roster that are to be deleted.¹⁴⁴ Name removal does not happen as often as it should, and certainly not as often as name addition happens, for several reasons. First, incentives to retire one’s own name are weak. There are no

139. *Master Roster Rules*, *supra* note 127 (“Make sure that your skater(s) are really committed to your league before putting their names on the roster.”).

140. Posting of JadeFu to roller_girls@yahoo.com (Mar. 30, 2006), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/7419 (“[Y]ou generally don’t register names until you’ve been skating a few months and pass a skills assessment so you know the girl’s going to stick around.”).

141. *See, e.g.*, Posting of Nameless Whorror, Montreal Roller Derby, to roller_girls@yahoo.com (Dec. 3, 2009), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/37752 (“[O]ur name wrangler . . . double check[s] herself that the [submitted] names are not taken or too similar.”); *Master Roster Rules*, *supra* note 127 (“Have one person in your league send in master roster updates.”).

142. *See Master Roster Rules*, *supra* note 127 (“Updates are processed on a first-come-first-serve basis. That means that a name that wasn’t on the master roster when you submitted it to us might be rejected because somebody sent the same name in a day earlier.”). By contrast, common law trademark rights accrue upon first use in trade in a particular geographic area. U.S. PATENT AND TRADEMARK OFFICE, BASIC FACTS ABOUT TRADEMARKS 1 (2010) (explaining that trademark rights in the U.S. generally arise upon the first use of the mark in commerce); *see United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 100 (1918) (identifying both priority of adoption and geographic area as factors that go to whether the use of a trademark is infringing and holding that a party who first used a mark in Massachusetts was estopped from obtaining an injunction against a party who later used the same mark in Kentucky).

143. *Master Roster Rules*, *supra* note 127 (“Due to the overwhelming amount of names on the master roster[, PLEASE delete skaters who are no longer with your league. We will cap league rosters at 140 names and will not register new names until you delete old names that are no longer in use.”).

144. Proposed deletions are not effected immediately. Rather, the administrators list a name as “TBD” (To Be Deleted) with a deletion date in order to give a skater notice in the event that her name was wrongly proposed for removal. *See Master Roster*, *supra* note 74 (listing several names with “TBD” and a deletion date).

ways to sanction skaters who have left derby without doing the courtesy of notifying the Master Roster that their names are now available. Second, skaters often change their minds about retirement, so any derby girl who has even a sliver of interest in returning to the sport will be disinclined to give up her name. And third, even when disused names are purged from the Master Roster, skaters may not want a “used” name because using it may seem derivative rather than original and because it may have unwanted associations with its prior user. As a result of all this, turnover in names tends to be slow, and the Master Roster contains many names of skaters who have become inactive,¹⁴⁵ despite best efforts by name wranglers and list administrators.¹⁴⁶

2. *Informal Norms for Adjudication and Enforcement.*—The formal rules governing name registration and regulation completely resolve some issues. It’s clear from the Master Roster procedures *how* a name should be registered, for example. But these rules determine what names can be registered only in broad terms. This breadth leaves two gaps that have to be filled by informal norms: adjudication (determining when a submitted name infringes a registered name) and enforcement (assuring compliance with name-uniqueness principles once a violation has been established).

a. *Adjudication.*—Some applications of the formal rules governing derby names are simple and straightforward. If a proposed name is identical to an existing registered one, another skater cannot use that proposed name.¹⁴⁷ But sometimes the question is harder to answer. Is “Fifty Aphrodite” too close to the registered name “Mighty Aphrodite”? Is “AphroDIEte” too close to “Mighty Aphrodite”? These disputes about similar but not identical names are not resolved by the straightforward principles articulated by the Master Roster’s creators and administrators,¹⁴⁸ but instead on the basis of informal norms and subcultural practices.

145. See Posting of Trailer Trish, E-Ville Roller Derby, to roller_girls@yahoogroups.com (Dec. 3, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37754 (observing a high incidence of inactive skater names remaining on the Master Roster).

146. See, e.g., Posting of Paige Burner to roller_girls@yahoogroups.com (Dec. 16, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/26657 (proposing over five hundred names for deletion).

147. There are a handful of exceptions. For example, Rose City Roller Megahurtz agreed to let a Gotham Girl skate under the same name. See *Master Roster*, *supra* note 74 (listing the two Megahurtzes and indicating that Rose City’s Megahurtz has been duly notified of the conflict). Fewer than twenty other identical name pairs exist on the Master Roster, which illustrates the strength of the name-uniqueness principle. *Id.*

148. This is not terribly far off from similar line-drawing issues that arise with frequency in IP, such as notoriously hard-to-resolve issues like substantial similarity or fair use in copyright or likelihood of confusion in trademark. See, e.g., Oren Bracha, *Standing Copyright Law on Its Head? The Googlization of Everything and the Many Faces of Property*, 85 TEXAS L. REV. 1799, 1858–59 (2007) (“[F]air use decisions are hotly contested and difficult to make and to predict.”).

The number and variety of disputes over similar but not identical derby names allows identification of a number of criteria that skaters use in resolving these conflicts.¹⁴⁹ Three criteria predominate. First, and most importantly, the skater who registered the name first has presumptive priority, as the Master Roster rules indicate.¹⁵⁰ The priority-of-registration principle prevails even when the registrant does not appear to have been the name's first user:

[I]t's just not cool to rip off someone else. Yeah, you may have actually had the idea first, but they acted on it. We had that in our league. Fujiyama Mama's first name was Ginger Vitus. She started posting on [the RollerGirls] board and before we sent our roster in someone else had registered it. We don't know if she "ripped the name off" or if she just registered first, but Fujiyama Mama had to find a new name—which by the way is up for grabs. But I'm not telling her new name until we get it registered :)[.]¹⁵¹

Also central to adjudication is the degree of similarity between the two names. Some names are identical save for a single letter (e.g., Mighty Aphrodite and Fighty Aphrodite). Others overlap because one name contains, but makes a significant variation on, another (e.g., Drew Blood and Nancy Drew-Blood). While in trademark-likelihood-of-confusion analysis the idea of similarity typically encompasses sight, sound, and meaning,¹⁵² in derby it's almost all about sound. Skaters are worried that excessively simi-

149. These informal norms overlap to an interesting extent with the dominant way of resolving likelihood-of-confusion issues in the trademark setting. Courts evaluating likelihood of confusion also consider the similarity of the marks at issue and the proximity of the products represented by the marks. *See* Polaroid Corp. v. Polarad Elecs. Corp., 287 F.2d 492, 495 (2d Cir. 1961) (outlining nonexclusive factors for consideration in likelihood-of-confusion analysis). Moreover, skaters sometimes feel that they have common law-like rights in their names that arise by virtue of use even before the name is formally registered on the Master Roster. *E.g.*, Posting of Chrome Molly to roller_girls@yahoogroups.com (Feb. 5, 2010), available at http://sports.groups.yahoo.com/group/roller_girls/message/38266 (signing her post "Chrome Molly #4130 (ain't listed yet, but IT'S MY NAME)").

150. *See supra* note 129 and accompanying text.

151. Posting of Cyn Vicious, Gem City Rollergirls, to roller_girls@yahoogroups.com (Feb. 22, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/5801. Derby girls even defer to the first-to-register rule when the prior registration was a mistake and they should have been registered first:

I believe the Lady Gagua you saw was from my team. She sent her name in before the other one, but somehow our name requests got lost. So we were never told . . . if our names were rejected or accepted because they apparently never saw our email. She has changed her name to Jersey Vicious for this season

Posting of Inskatiabie to roller_girls@yahoogroups.com (Feb. 6, 2011), available at http://sports.groups.yahoo.com/group/roller_girls/message/41629.

152. *Sally Beauty Co. v. Beautyco, Inc.*, 304 F.3d 964, 972 (10th Cir. 2002) (citing *King of the Mountain Sports, Inc. v. Chrysler Corp.*, 185 F.3d 1084, 1090 (10th Cir. 1999)) (stating that likelihood-of-confusion analysis in trademark law considers several nonexhaustive factors, including similarity between the marks, and that similarity between the marks depends on sight, sound, and meaning).

lar names will confuse fans when uttered mid-bout by announcers,¹⁵³ so that names that sound very similar will be more likely to be found infringing.¹⁵⁴

Moreover, skaters invoke—often explicitly—the familiar trademark notion of likelihood of confusion to articulate the possible harm caused by similar names and to determine whether a proposed name infringes a registered one.¹⁵⁵ Two possible drivers of likely confusion are geography (proximity of the relevant leagues increases the chances of confusion) and form of derby (confusion is more likely if the skaters both compete in banked- or flat-track leagues). The former has been taken more seriously in this regard, with some skaters suggesting that geographically disparate skaters should have no objection to overlap in names (and other skaters disputing this assertion).¹⁵⁶ The banked-track–flat-track distinction tends to have little weight, though, especially as derby girls increasingly compete on both surfaces rather than exclusively on just one.¹⁵⁷

Other considerations emerge from disputes about derby name rights, albeit less prominently. Lapse of time between a junior user’s adoption of a name and the senior user’s contacting her about the dispute may make a difference. This is both because not policing your name may suggest a lack of diligence by the senior user and because it becomes increasingly difficult for skaters to switch names after they have spent substantial time using them.¹⁵⁸ Some skaters have suggested that the identity of a junior user may

153. See E-mail from Fighty Almighty (then known as Fighty Aphrodite) to Mighty Aphrodite, *supra* note 70 (explaining her position in the dispute over the name “Fighty Aphrodite”).

154. See Posting of Cyn Vicious, Gem City Rollergirls, to roller_girls@yahoogroups.com (Jan. 23, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/4515 (“We told our girls . . . very clearly that they could not duplicate an existing player/team/league name, even if it was spelled differently.”).

155. Posting of Michi-chan to roller_girls@yahoogroups.com (Nov. 10, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/26081 (stating, as an example, that “if there was another skater named Snot Rocket, [it] would not be good for the reputation of the original Snot Rocket and there would be confusion”).

156. Compare Posting of Hooligal, London Rockin’ Rollers, to roller_girls@yahoogroups.com (Feb. 5, 2010), available at http://sports.groups.yahoo.com/group/roller_girls/message/38261 (“Maybe each country could have their own[;] . . . would it be a big deal if there was a Ghetto Blaster in [C]anada and a Ghetto Blasters team in the UK?”), with Posting of Dolly Destructo, Toronto Roller Derby, to roller_girls@yahoogroups.com (June 21, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/22055 (“I’d be pissed if you use my team name. . . . Maybe across the continent, but you’re . . . not far enough [from] me.”). Courts have adopted a similar line of reasoning in trademark law where senior registered users can enjoin junior users of the same mark in a different geographical area upon showing of intent to do business under the mark in that area. *E.g.*, *Dawn Donut Co. v. Hart’s Food Stores, Inc.*, 267 F.2d 358, 365 (2d Cir. 1959).

157. See Posting of Fighty Irish, Bay Area Derby Girls, to roller_girls@yahoogroups.com (Feb. 22, 2006, 4:07 AM), available at http://sports.groups.yahoo.com/group/roller_girls/message/5731 (“IT DOESN’T MATTER IF YOU’RE BANKED TRACK, FLAT TRACK OR ON MARS—WE ALL SHARE THE SAME ROSTER FOR THE TIME BEING SO WE MUST RESPECT THE ORIGINAL PLAYER WHO LAID CLAIM TO THE NAME.”).

158. *Cf.* Interview with The Boogiewoman, *supra* note 41 (discussing the difficulty of changing names once they have been established).

be partially outcome determinative, so that a talented and effective skater would get more latitude for using a similar name than a poor one.¹⁵⁹ Derby girls who perform inadequate due diligence by making half-hearted attempts to identify the presence of preexisting names are unlikely to convince senior registrants to allow the use of similar names, perhaps because their lack of effort suggests bad faith. The tone of skaters' discussions about disputed names clearly affects outcomes. A junior user who acts surly and entitled, rather than polite and deferential, when seeking the senior user's permission to use a similar name is much less likely to gain that consent. As one roller-girl observed, "We're all really proud of our names, and it could get ugly when someone isn't polite."¹⁶⁰ Finally, the quality of the proposed name may partially determine the outcome of these disputes. Monikers that are uncreative or nonsensical variations on preexisting ones may be seen as unthreatening enough that the senior user is indifferent to their use.¹⁶¹

b. Enforcement.—Assuming that there is agreement that two names are in conflict (i.e., where they are either identical or substantially similar), an additional issue remains: How are a skater's superior name rights enforced? The Master Roster administrators can decline to register a name, but as an informal organization, they lack any coercive force, so a skater who consciously uses an overlapping name cannot be fined or thrown in jail. And yet despite the total absence of formal coercive sanctions, the incidence of repetitive name use is small, thanks to informal enforcement norms. This raises two related puzzles: How do skaters enforce rules governing derby name uniqueness, and why is the level of compliance so high?

The answer to the *how* question is straightforward. The primary means of enforcement is simply personal contact and interaction that relies on skaters' strong incentives to maintain the uniqueness of their own names.¹⁶²

159. See, e.g., Posting of Sweet N. Lowdown to roller_girls@yahoogroups.com (Feb. 8, 2010), available at http://sports.groups.yahoo.com/group/roller_girls/message/38285 ("[I] want to be known for my skating, not my catchy name and if people get us confused sometimes, [I] only hope it'll be a compliment to the other skater."). But see Posting of Michi-chan, *supra* note 155 ("I think that the skate name is the skater's personal reputation. Imagine if there was another skater named Snot Rocket who skated pretty bad That would not be good for the reputation of the original Snot Rocket and there would be confusion.").

160. Posting of Convictina Brawl, Tallahassee Rollergirls, to roller_girls@yahoogroups.com (June 21, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/22074; see also Posting of Made'n Texas, Dallas Derby Devils, to roller_girls@yahoogroups.com (Mar. 8, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6336 (observing that her league avoided using the name "The Dallas Derby Dolls" because the L.A. Derby Dolls "politely" objected).

161. See, e.g., Posting of Markie D. Sod, L.A. Derby Dolls, to FB_news@yahoogroups.com (on file with author) (expressing a lack of concern over several derivations of her name, such as Marquee d'Sawed, because "they actually just sound lame & arent [sic] exactly like my own").

162. See Posting of Evilyne Tensions, E-Ville Roller Derby, to roller_girls@yahoogroups.com (June 21, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/22077 ("[I]f you're using a unique name, you have every reason in the world to get it registered and make sure it stays unique.").

These exchanges usually take the form of an e-mail exchange between the skater who wants to use a name and the one who has registered a similar one.¹⁶³ Skaters exhibit a high degree of deference to the first-to-register rule:

ANYTIME someone has had a REALLY similar name to mine over the last few years, it's been remedied directly with that skater. On TWO [occasions,] skaters (living nowhere near me) have added parts to their name so it wouldn't be so close to mine. Everyone wants their individuality . . . including the skaters picking names close to existing skaters.¹⁶⁴

Interactions relating to name conflicts incorporate some or all of the informal norms discussed above and usually (though not always) resolve name disputes to skaters' satisfaction.¹⁶⁵ For instance, *Fighty Aphrodite* agreed to change her name (to "Fighty Irish" and eventually to "Fighty Almighty") after receiving complaints from *Mighty Aphrodite*.¹⁶⁶ Other skaters have added elements to their names to make them more distinct from preexisting ones.¹⁶⁷ In one instance, skaters agreed on a geographic sharing arrangement designed to reduce the likelihood that the skaters' similar names would cause them to be confused with one another.¹⁶⁸ There are a few well-known incidents of name conflicts in which a skater simply refused to give

163. The earliest written rules invited this kind of informal adjudication. See Posting of Hydra, *supra* note 72 ("Resolve your own disputes. . . . If you have a beef with someone's name, contact them or their league about it. I have no powers of enforcement & prefer to stay out of conflicts between leagues & skaters.").

164. E.g., Posting of Havoc, Sisters of Mayhem Roller Derby, to roller_girls@yahoo.com (Aug. 18, 2008), available at http://sports.groups.yahoo.com/group/roller_girls/message/32120.

165. See, e.g., Posting of Chrome Molly, *supra* note 149 (observing that she disputed the rejection of her originally proposed name but concluding that "in the spirit of not being that douchebag I honored the registry"); Posting of Roxy Moron, Lehigh Valley Rollergirls, to roller_girls@yahoo.com (June 21, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/22057 ("You know, my team name is the Hissy Fits and we had to get permission from the retired skater 'Hissy Fit' to be able to use the name. So they are somewhat strict about it. Which seems fair."); cf. Posting of Made'n Texas, *supra* note 160 (explaining that her league's original proposed name, "The Dallas Derby Dolls," was opposed by the L.A. Derby Dolls and then was changed to "Dallas Derby Devils"); Posting of Zombiegirl, Throttle Rockets, to roller_girls@yahoo.com (Mar. 8, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6365 (noting that a Minnesota derby team called the Rockits asked for permission from the Seattle-based Throttle Rockets when adopting their team name).

166. Posting of Fighty Irish, *supra* note 157 ("[I] foolishly did not read the roster closely enough when I came up with the brilliant nom de guerre 'Fighty Aphrodite.' [Y]ou best believe [I] heard from 'Mighty Aphrodite' of the TXRD [I] am now . . . Fighty Irish.").

167. See *supra* note 164 and accompanying text (discussing instances where skaters have added elements to their names to make them distinct from other names).

168. In the geographic sharing arrangement, registrant Drew Blood of Seattle's Rat City Rollergirls permitted second-comer Nancy Drew-Blood of the Bay Area Derby Girls to use that name (presumably because of their geographical distance) but only on the condition that if Nancy Drew-Blood wanted to compete in the same tournament as Drew Blood, she would have to do so under an alternate name. Posting of Nancy Drew-Blood, Bay Area Derby Girls, to BadGirlsLeague@yahoo.com (Dec. 30, 2005, 11:38 AM) (on file with author).

up a conflicting name, despite the animosity her choice fomented.¹⁶⁹ These unresolved name disputes, though, probably overstate the incidence of noncompliance because of the extent to which the presence of the Master Roster fends off name infringement in the first place. The dog that didn't bark in this context is the number of times that skaters use the Master Roster to determine that their proposed name is too similar to a preexisting one and defer to the system by simply seeking another name. While it's impossible to measure absence of evidence, the number of times the Master Roster (while far from perfectly effective)¹⁷⁰ successfully fends off name conflicts is almost certainly far greater than the number of name conflicts it fails to deter.

The Master Roster's overall efficacy in coordinating nonconflicting skate name usage and averting related conflicts raises a related puzzle. What causes skaters to buy into the prevailing derby name regulation system in the absence of coercive authority or threat of sanctions?¹⁷¹ From a welfare perspective, this high degree of compliance seems puzzling because actors are often presumed to follow law only to the extent that law can make noncompliance more costly than compliance.¹⁷² So why should derby girls comply with these rules absent any state-imposed cost for noncompliance? There are several answers to this question, each of which draws from a different branch of the norms literature.

169. Isabelle Ringer of the San Diego Derby Dolls learned that a skater from the Rose City Rollers of Portland was skating as Isabelle Ringer. E-mail from Isabelle Ringer to author, *supra* note 82. Isabelle, the prior registrant, objected to Izabelle's name via e-mail and offered to let Izabelle skate under it until the end of the season before choosing a new name. *Id.* Izabelle simply refused to change and continued to skate under the infringing name, though of course the Master Roster administrators did not register her name. *Id.*

170. The Master Roster system depends on (overworked) humans for monitoring, compliance, and enforcement, and it is thus necessarily vulnerable to human error. The most common error is the registration of names that arguably infringe preexisting ones. *See, e.g.*, Posting of Mercy Less to roller_girls@yahoogroups.com (Dec. 4, 2009), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/37766 (observing that "[n]ew kids are getting names *approved* that are almost identical to an existing skater's, without her permission"); Posting of Lippy Wrongstockings to roller_girls@yahoogroups.com (Dec. 6, 2009), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/37812 ("[W]e have a skater BareLeigh Legal who has had her name for almost 2 years and I noticed an Oly [Rollers from Olympia, Washington,] skater with Barely Legal registered this year. Those are the exact same names in my opinion. So the humans are letting them through too.").

171. *See* Posting of Morbid Mangler, Fabulous Sin City Roller Girls, to roller_girls@yahoogroups.com (Oct. 23, 2009), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/37215 ("It's YOUR name to keep, as long as you are on the international roster and no one else has taken it first!").

172. This is the classic Holmesian "bad man" theory of why people comply with law. *See* Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897) (describing the "bad man" as one "who cares only for the material consequences which such knowledge [of the law] enables him to predict").

First, people may follow norms because they fear sanctions. Flouting derby name norms may not give rise to civil damages or criminal liability,¹⁷³ but it is by no means sanctionless.¹⁷⁴ Rather, the informal sanctions that skaters inflict on one another for violating name-uniqueness norms effectuate compliance to a large extent.¹⁷⁵ Skaters unanimously agree that choosing a name that has clearly been adopted by another skater—even a skater in another league—without permission would be egregiously socially unacceptable within the derby community and lead to ostracism.¹⁷⁶ As one derby girl observed,

Registering with [the Master Roster] is voluntary . . . but there are rules as to what can be registered. It's not just a free-for-all send your name in and it's yours, it has to not conflict with one that's already on the list. And while there are no derby police that are going to tell you that you can't skate under a certain name, it's kinda like bathing. Bathing is voluntary and no one can MAKE you bathe, but if you choose not to bathe, there will be consequences from your community. Similarly, registering your skate name is voluntary, but there are consequences from the derby community if you choose not to register your name because you're using a duplicate name.¹⁷⁷

And since being part of a community is central to the derby experience, the kind of shaming that flouting name-priority norms would engender would undermine entirely the advantages of being part of derby in the first place.

173. See Posting of TJohnston to roller_girls@yahoogroups.com (Feb. 8, 2010), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/38291 (describing the Master Roster system as “a courtesy thing”).

174. As I discuss in more detail below, the system is not legally enforceable but depends on rollergirls themselves to enforce it—as they readily do.

175. Cf. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 357 (1997) (articulating a theory of norm enforcement that is maintained by the withdrawal of esteem by group members from those who violate norms).

176. Posting of Red Davies to roller_girls@yahoogroups.com (Oct. 23, 2009), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/37217 (“The [Master Roster] is an honor system. There is absolutely nothing stopping anyone using the same name as you other than the close-knit derby community applying the douchebag rule.”).

177. Posting of Evilyne Tensions, *supra* note 162; see also ELLICKSON, *supra* note 3, at 57 (observing the central role of “truthful negative gossip” as a form of intragroup sanction); Interview with Hydra, *supra* note 62 (answering the question, “Can you just ignore the Master Roster?” by saying, “You can if you want to be an asshole!”); Posting of Kylie McLeod, *supra* note 73 (“[T]he shame of using a stolen name should be enough to prevent name thievery. I’m certain that . . . any skater/team/league using an obviously stolen name would be laughed off the track.”).

In a counterexample that illustrates the point, “renegade” leagues (which operate outside authority of WFTDA) tend to be less respectful of the Master Roster’s name-uniqueness norm. See, e.g., Posting of Suicide Jane, Renegade Roller Derby, to roller_girls@yahoogroups.com (Aug. 19, 2006), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/32138 (“I know who I am[,] If you want my name[,] who cares[?]”). But cf. Posting of Nafreaki, President, Renegade Roller Derby, to roller_girls@yahoogroups.com (Jan. 27, 2011), *available at* http://sports.groups.yahoo.com/group/roller_girls/message/41497 (seeking information about registering names on the Master Roster).

Second, derby girls may follow these norms not only because they fear the stick of shaming sanctions, but also because they seek the carrot of group acceptance. Another leading account of norm compliance looks to the desire of group members to signal to one another that they are good cooperators, both to gain acceptance and to increase the chance that others in the group will choose to cooperate with them.¹⁷⁸ To take one particularly salient instance in the derby setting, name adoption typically happens at the outset of a skater's career. Newbie derby girls ("fresh meat," in subcultural parlance) often compare the first few months of their participation in the sport to military boot camp, both in terms of the physical pain it inflicts and in terms of the need to fit in with a new group and defer to authority.¹⁷⁹ So as a practical matter, the likelihood that a relatively new skater would rebel against established norms about name uniqueness at the same time that she is seeking to fit into a new, foreign, and sometimes threatening world is vanishingly small.¹⁸⁰

Finally, the role of path dependence in norm compliance cannot be ignored. Another theory for norm compliance is epistemic: people may comply with norms because conforming to a salient, preexisting social practice saves information costs (in other words, provides the mental path of least resistance).¹⁸¹ This account has to be a major driver explaining why derby girls use the Master Roster and obey its related norms: given the existence of a readily available means of name regulation, it's hard to imagine why they would take the time and trouble to use any other method, such as the costly federal trademark registration system. Indeed, derby girls who do not use the Master Roster often explain that they failed to do so only because they did not know that it existed, suggesting that the only thing standing in the way of near-total compliance is the relatively small information cost of finding out that the Master Roster is out there.¹⁸²

178. See Eric A. Posner, *Symbols, Signals, and Social Norms in Politics and the Law*, 27 J. LEGAL STUD. 765, 768 (1998) (propounding this theory).

179. See Interview with The Boogiewoman, *supra* note 41 (describing the mix of novelty and uncertainty experienced by name-choosing newbies as the "perfect recipe for obedience").

180. See Posting of Mercy Less to roller_girls@yahoogroups.com (July 13, 2008), available at http://sports.groups.yahoo.com/group/roller_girls/message/31270 ("Please respect the fact that a girl skating under her name for 3–5 years on the national level has built a reputation you haven't put in enough work yet to understand, and it's not okay to use her exact name, even if you'll never play outside Needles, California."). These leagues usually comply once they are apprised of the importance of and procedures for proper name registration.

181. See STEVEN A. HETCHER, *NORMS IN A WIRED WORLD* 193 (2004) (propounding an epistemic theory of norm compliance).

182. See, e.g., Posting of Ms. D'Fiant, Savannah Derby Devils, to roller_girls@yahoogroups.com (Mar. 8, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6352 ("I apologize for not asking permission [to use derby names for a new league]. When we started, we were very much in the dark and now there's been so much work going into it that I'm reluctant to change. If this is a real problem, please email me and we can talk offline.").

And if these sanctions do not work, there is always the oldest form of self-help: violence.¹⁸³ Skaters have (perhaps facetiously) invoked threats of physical harm against those who fail to respect the derby world's rules and norms of name usage. As one rollergirl put it, "sure there's no laws in place—you don't even have to register your derby name—it's COURTESY. Ref might not see you smash me in the face—but I know, and trust me baby, I'm comin for ya."¹⁸⁴ Added another, "I totally agree with the not stealing/copying of names Someone once said imitation was the best form of flattery. . . . So flatter me and then let me kick your a\$\$."¹⁸⁵ These threats are just talk, after all, and should be taken with a grain of salt. There is no evidence (that I've seen, anyway) of a derby girl beating up someone who used her name without permission. But in a sport where skaters are skilled at using full-body blocks at high speeds in the course of competition, the idea of using violence to lay down the law against those who flout shared norms about name usage certainly does not seem completely implausible.¹⁸⁶

3. *Formal Law*.—The foregoing system of non-state regulation comprises the nearly exclusive means by which derby girls seek to assure the uniqueness of their names. In some instances, though, rollergirls have turned to formal law as an alternative or supplemental form of protection. For example, Ivanna S. Pankin and Trish the Dish, a famous derby couple whose roots in the sport trace to its resurgence in the early 2000s, have both sought and received registration of their names on the Principal Trademark Register.¹⁸⁷ The pair decided to register their names not only because they are integrally involved with the derby community as active skaters for the San Diego Derby Dolls, but also because they co-own and operate a business, Sin City Skates, that connects their financial livelihood to the derby world.¹⁸⁸ Skaters who are featured in the Nintendo Wii game *Jam City Rollergirls*¹⁸⁹ had their names registered as trademarks as a result of their

183. Cf. ELLICKSON, *supra* note 3, at 58–59 ("Ranchers who run herds at large freely admit that they worry that their trespassing cattle might meet with violence.").

184. Posting of Dolly Destructo, *supra* note 89.

185. Posting of Bri to roller_girls@yahooogroups.com (Mar. 11, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/6522.

186. In at least one instance, a name dispute appeared to be headed toward violence, though it apparently did not go that far. See Posting of Ivanna S. Pankin, *supra* note 79 (recounting how Juana Beat'n and Jojuanna Beatin "were starting to make plans to meet behind the bike racks over their names").

187. IVANNA S. PANKIN, Registration No. 3,783,638; TRISH THE DISH, Registration No. 3,736,738. Texas Rollergirl Crackerjack sought trademark registration for her skate name in 2008 but was opposed by Frito-Lay (owner of the trademark in Cracker Jack popcorn candy). See *infra* note 190.

188. Interview with Ivanna S. Pankin, *supra* note 30 (explaining her and Trish's motivations for federally registering their skate names as trademarks).

189. See *Home*, JAM CITY ROLLERGIRLS, <http://www.jamcityrollergirls.com/> (last updated Jan. 24, 2010) (describing the game).

involvement in a mainstream commercial endeavor.¹⁹⁰ Many derby leagues, such as the L.A. Derby Dolls, have sought and received trademark protection for their league names.¹⁹¹ Other leagues are also registered with the appropriate state agencies as limited liability corporations.¹⁹²

Formal law also affects derby name regulation in that skaters may find their ability to control their names limited by contract. All skaters have to sign agreements prior to being allowed to skate with their leagues, primarily to hold the leagues harmless for any physical injuries suffered in the course of competition or practice. The L.A. Derby Dolls also require participants to cede to the league the right to license the names and likenesses of skaters for film, television, or other purposes (e.g., action figure dolls, such as the popular model featuring Iron Maiven). Pursuant to this agreement, skaters get a percentage of any royalties derived from uses of their names. And at least one derby girl has successfully threatened suit for an unauthorized use of her skate name by derby outsiders. Arizona Roller Derby skater Babe Ruthless objected when she discovered that her derby moniker was to be the name of the protagonist in the film *Whip It*.¹⁹³ With some help from legal counsel

190. These thirty registrations were all accepted, with one exception: Frito-Lay opposed the application of Texas Rollergirl (now Mad Rollin' Doll) and WFTDA president Crackerjack. See Justice Feelgood Marshall, *Bout Preview: Frito-Lay vs. Crackerjack*, DERBY NEWS NETWORK (Apr. 9, 2009), http://www.derbynewsnetwork.com/blogs/justice_feelgood_marshall/2009/04/bout_preview_frito_lay_vs_crackerjack (discussing Frito-Lay's opposition to Crackerjack's PTO registration). The opposition proceedings between Frito-Lay and Crackerjack are still ongoing. E-mail from Crackerjack to author (Feb. 25, 2011, 10:54 AM). The Wii game has been released, though, and Crackerjack's character appears in it merely as "CJ." *Compare Teams*, JAM CITY ROLLERGIRLS, <http://www.jamcityrollergirls.com/index-2.html> (listing "CJ" among the Mad Rollin' Dolls), *with Play Derby with the Dairyland Dolls—On Your Wii!*, MAD ROLLIN' DOLLS, <http://www.madrollindolls.com/index.php/news-blog/297-play-derby-with-dds-on-your-wii> ("Dairyland Dolls skaters and alumnae featured in the game include Chop Suzzy, Jewels of DeNile, Mouse, Carrie A. HackSAW, Vanna White Trash, and Crackerjack.").

191. The L.A. Derby Dolls is comprised of five teams, such as the Fight Crew and the Tough Cookies. The league has trademarked "Derby Dolls," DERBY DOLLS, Registration No. 3,063,277, and is working on trademarking the names of its individual constituent teams. Many other leagues, such as TXRD Lonestar Rollergirls, Minnesota RollerGirls, and Gotham Girls Roller Derby, have registered their league names as trademarks with the PTO. TXRD LONESTAR ROLLERGIRLS, Registration No. 3,147,369; MINNESOTA ROLLERGIRLS, Registration No. 3,504,624; GOTHAM GIRLS ROLLER DERBY, Registration No. 3,675,094.

192. See, e.g., Posting of Abby Noxious, President, Harrisburg Area Roller Derby, to roller_girls@yahoo.com (Feb. 26, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/5929 (discussing the registration of Harrisburg Area Roller Derby as an LLC with the Pennsylvania Department of State).

193. See Posting of Babe Ruthless, Arizona Roller Derby, to roller_girls@yahoo.com (June 26, 2008), available at http://sports.groups.yahoo.com/group/roller_girls/message/30921 (complaining that Shauna Cross, screenwriter of *Whip It*, used her name without permission and that "[o]nce this movie comes out I will look like a huge poser"). Other skaters in the thread almost unanimously responded that the use of Babe's name, even if unauthorized, would be flattering and reflect well on her (as long as the character using the name was cool). See, e.g., Posting of Holly Gohardly, Coach, Charm City Roller Girls, to roller_girls@yahoo.com (June 27, 2008), available at http://sports.groups.yahoo.com/group/roller_girls/message/30929 ("That's exciting unless the movie character is really lame, then I would really be worried.").

provided by WFTDA, Babe received some compensation from the film's production company in a confidential settlement.¹⁹⁴

All of these instances of formal regulation represent attempts to protect derby girls' names and identities from infringement by actors external to the derby world. Ivanna S. Pankin registered her name as a trademark largely because she wanted to make sure that competitors outside the derby world could not free ride on her business goodwill. Babe Ruthless's concern about unauthorized use of her moniker was directed at a film production company, not at another roller derby girl. In these and other instances, the Master Roster did sufficient work to assure the skaters that no one else would compete under their derby names. It remains necessary to invoke formal law only outside contexts that, and against individuals who, are not governed by roller derby's name-exclusivity norms.

III. Labor and Love, Creation and Law: The Master Roster's Lessons for IP Regulation

This descriptive account of the roller derby name regulation system generates three categories of insights about IP norms and law. First, to the extent that the Master Roster and its related rule structure resemble other IP norm systems, it reflects on the existing accounts of why actors opt for norms rather than formal law, showing how these theories succeed and fail in accounting for the development of roller derby's nonlegal IP regulation. Second, to the extent that the Master Roster is a distinctive site of IP norm emergence, it generates insights about how and why nonlegal rules and norms develop, and are preferable to formal law, in the context of nonmarket production by identity-constitutive communities. Finally, these two themes in turn engender insights about user-generated governance systems, the increasing marginality of traditional IP, and the status of rules as law.

A. *The Merits and Limits of Current Norm-Emergence Accounts*

Why do some groups use norms rather than law to regulate their IP? One explanation looks to necessity. Some of the recent scholarship about IP and norms has suggested that actors employ norms when copyright, trademark, or patent law fails to offer workable ways to protect the intangible goods they create. These shortfalls may be substantive. That is, while physical property law takes pretty much any land or chattel as its object,¹⁹⁵ IP is more fickle. Federal copyright, for example, extends only to fixed works, excluding from its ambit of protection such obviously original and valuable

194. Because the settlement was confidential, it is unclear what form the compensation took. Interview with Hydra, *supra* note 62.

195. There are exceptions: the law still largely prohibits property in babies and organs. Kimberly D. Krawiec, *Foreword to Show Me the Money: Making Markets in Forbidden Exchange*, 72 LAW & CONTEMP. PROBS., at i, ii, vii–viii (2009).

works as jazz improvisation or spoken-word poetry.¹⁹⁶ So, the theory goes, where IP law does not apply to particular intangible goods, such as jokes or magic tricks or recipes,¹⁹⁷ these substantive shortfalls must be remedied by the development of corollary norms. IP law protection might also be unavailable to some groups because it is impractical. Oliar and Sprigman, for example, suggest that comedians use norms instead of law partly because enforcing copyright in jokes would be prohibitively costly (in dollars and in transaction costs).¹⁹⁸ In its substantive or practical variations, this intimation is a legal centralist account, one that indicates that the geography of norms is primarily determined by the unavailability of law.

A legal centralist theory of norm emergence clearly cannot explain the development of the Master Roster. Trademark or other legal rights could readily be deployed to preserve derby name uniqueness and indeed have been in some cases.¹⁹⁹ Nor does law's available avenue for name protection seem to create substantive rules that are ill-suited to derby girls' needs. To the contrary, the nonlegal regulatory system derby girls have created on their own actually looks quite a lot like trademark law. It employs a registration-based priority system, it focuses on likelihood of confusion when evaluating name infringement, and within that analysis, it employs many of the same considerations that courts have used to determine the presence of likely confusion. So what differentiates roller derby girls from other groups that have created extralegal systems for governing their IP is that law offers roller girls a plausible avenue for protecting the IP they create. Yet despite the availability of this avenue, derby girls don't take advantage of it, at least not as a means of regulating name uniqueness among themselves.²⁰⁰

One could, of course, plausibly theorize that derby girls would like to use trademark law to protect their names but cannot because it is simply too expensive. The process of acquiring and enforcing federal trademarks would almost certainly be cost prohibitive for most roller girls,²⁰¹ but as we have seen, the evidence gives no indication that the Master Roster developed in

196. See 17 U.S.C. § 102(a) (2006) (limiting federal copyright protection to "original works of authorship fixed in any tangible medium of expression").

197. See Fauchart & von Hippel, *supra* note 6, at 187 (observing that formal IP law is substantively unavailable to chefs); Loshin, *supra* note 11, at 130–34 (observing that formal IP law is substantively unavailable to magicians); Oliar & Sprigman, *supra* note 8, at 1799–809 (observing that formal IP law is substantively unavailable to comedians).

198. See Oliar & Sprigman, *supra* note 8, at 1790 ("[C]opyright law does not provide comedians with a cost effective way of protecting the essence of their creativity."); see also *id.* at 1799–801 (outlining practical barriers to comedians' use of formal copyright law to protect their routines).

199. See *supra* notes 187–91 and accompanying text.

200. As we have seen, some derby girls and leagues have turned to trademark law in order to secure their rights against entities outside the derby world. See *supra* notes 187–91 and accompanying text.

201. See Interview with Ivanna S. Pankin, *supra* note 30 (suggesting that most skaters, especially younger ones, cannot justify spending their rent money on trademark filing fees and attorneys' fees).

conscious contradistinction to trademark law. To the contrary, as I explain in more detail below, its creators indicated that the Master Roster and its related norms grew up independently of, rather than as a second-best response to the absence of, available legal alternatives.²⁰²

Given the inadequacy of a legal centralist theory for the creation of the Master Roster, perhaps the other leading theory for the development of norms instead of law, a non-legal centralist account, can illuminate it instead. Ellickson's *Order Without Law* is the cornerstone non-legal centralist explanation for the evolution of extralegal norm systems as forms of governance. Ellickson showed that some groups, like Shasta County ranchers, develop norms independently and in complete ignorance of law, often crafting rules that are at odds with substantive law that would otherwise be available.²⁰³ This happens, he argued, where groups are close-knit, the norms are efficiency enhancing, and the norms govern workaday matters.²⁰⁴

In some respects, this story seems to provide a sufficient account for the development of the Master Roster. Derby epitomizes the close-knit community: it is extremely insular and provides a sense of connection and a rich social network for its participants. These qualities assure that the derby world bears the core indicia of close-knit groups: that informal power and relevant information are both widely shared.²⁰⁵ Name-enforcement power is widely distributed throughout the derby world, from the Master Roster's administrators at the top, through name wranglers at the league level, to individual skaters who enforce shaming sanctions at an individual level. Information about name usage is also widely shared, thanks largely to the Master Roster itself as well as to the visible mechanisms (e.g., the roller_girls Yahoo! message board) and less visible ones (e.g., a truly robust rumor mill) that enable the dissemination of information with lightning quickness.

Prevailing derby name norms also bring numerous efficiency advantages to their users.²⁰⁶ Registering one's name on the Master Roster

202. See E-mail from Hydra, Texas Rollergirls, to author (Nov. 21, 2011, 3:16 PM) (confirming that the founders of the Master Roster never paused to consider using trademark, or any other kind of IP law, to regulate derby names).

203. ELLICKSON, *supra* note 3, at 48–53.

204. See *id.* at 167 (“[M]embers of a close-knit group develop and maintain norms whose content serves to maximize the aggregate welfare that members obtain in their workaday affairs with one another.” (emphasis omitted)).

205. See *id.* at 177–78 (“A group is *close-knit* when informal power is broadly distributed among group members and the information pertinent to informal control circulates easily among them.”).

206. While revealed preferences would suggest that the Master Roster is welfare enhancing, it may have some nonobvious welfare costs. First, the Master Roster's priority system rewards earlier skaters, not necessarily better ones (“better” in the sense of superior competitors athletically or more devoted in their commitment to helping to support and develop their league and the derby world generally). This time-priority structure could have the welfare-negative effect of conferring a valuable amenity (more coveted names) on less deserving skaters.

Second, the Master Roster's strict property-rule structure, which discourages sharing arrangements, may overprotect derby names. Owners tend to overvalue the goods they possess, an

saves the time, trouble, and expense of going through formal trademark-registration procedures. While registering a trademark typically costs in the neighborhood of \$1,000 (inclusive of legal fees), the Master Roster requires only the trivial trouble of complying with relevant procedures and sending an e-mail. Derby's do-it-yourself name registration system also provides much lower cost enforcement, permitting skaters to cheaply and easily self-police rather than having to employ lawyers and state apparatus.²⁰⁷ All of these savings are particularly salient in derby, where many participants are impecunious and would find the costs of federal trademark registration prohibitive, even if they were inclined to take advantage of it.²⁰⁸

A non-legal centralist story can do more to explain the emergence of the Master Roster than its legal centralist counterpart can. In other respects, though, it falls short. While theory works well to explain the organic development of informal norms, it cannot fully account for the emergence of formal, centrally controlled governance regimes, such as derby's name registration system. Such features include the Master Roster itself (a complex registration system requiring constant management), as well as its attendant formal rules (written instantiations of preexisting norms requiring the intervention of authority figures), neither of which have an analogue in the entirely informal governance regimes such as the ones used by comedians, French chefs, and magicians. This formal-informal dichotomy is not merely a descriptive matter. Derby name regulation requires not only an account of the spontaneous arising of informal order,²⁰⁹ but also of the development of this first-level informal order into a second-level system that is centralized and formalized (i.e., written) in a way that requires the initial and ongoing intervention of creators and administrators. I explore, and seek to explain, this distinct feature of the Master Roster and its related rules in the following subpart.

effect that may be particularly pronounced where goods are connected to owners' identities. See Daniel Kahneman et al., *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSP. 193, 194-97 (1991) (describing the endowment effect). If this is true of derby names (which does not seem implausible given the intensity with which skaters respond to name infringement), then the Master Roster should seek to temper, rather than reflexively protect, derby girls' strong ownership instincts. For example, it may be more efficient for the Master Roster system to formally incorporate sharing arrangements for geographically disparate skaters rather than give derby girls property-rule-like vetoes over any similar names, regardless of context.

207. See Interview with Hydra, *supra* note 62 (conjecturing that roller girls would not use lawyers to settle name disputes because it would be too expensive); cf. Sprigman & Oliar, *supra* note 8, at 1799-801 (arguing that practical as well as substantive concerns prevent comedians from turning to IP law).

208. See *supra* note 201 and accompanying text.

209. See generally 1 F.A. HAYEK, *LAW, LEGISLATION AND LIBERTY* 35-54 (1973) (discussing the spontaneous, efficient evolution of informal order).

B. Beyond Informal Order: Explaining the Development of Formal Rules Regulating Derby Names

The Master Roster and its attendant rules are formal principles that look very different from most of the other extralegal IP systems that other scholars have studied. Creating and maintaining this regime requires much more effort by founders and administrators than informal systems, which may arise over time, organically, and without the intervention of any member of the relevant group. Explaining the move from informal order to formal (albeit still extralegal) regulation requires examination of two questions. First, why didn't derby girls simply turn to federal trademark law when the necessity for formalization arose? And second, what moved a handful of skaters to take on the significant burden of creating and administering the Master Roster and its related rules in the absence of any monetary compensation?

1. *Trademark Law's Irrelevance to Derby Norms.*—Early on, it became obvious that derby's name regulation system could not depend solely on the kind of unspoken understandings that effectively governed relations between Shasta County ranchers or magicians or French chefs. Derby girls could not avoid using repetitive names unless there was a written, shared, widely available source that indicated both which names had already been taken as well as when they had been initially registered. While it might be possible for word of mouth to regulate uniqueness within individual leagues, or even within regional derby communities, when derby went nationwide and skaters began to number in the hundreds (and eventually thousands and tens of thousands), informal organization was clearly inadequate.

This moment (which occurred not long after contemporary derby enjoyed its initial resurgence) represents the threshold when some degree of formalization became necessary in order to maintain name uniqueness throughout the derby community. At this point, one obvious route for creating the kind of public, shared information about name priority would have been to require skaters to apply to have their names registered as federal trademarks. This would result in successful applicants having their skate names placed on the PTO's searchable Principal Register, enabling future skaters to figure out which names had been protected and when that protection had begun. This still suggests that a legal centralist story is plausible—that derby girls wanted to register their names with the PTO but were forced by the fees and trouble of the system to create a simpler alternative.²¹⁰

The evidence, though, does not bear out this account. On the contrary, the developers of the Master Roster never contemplated using trademark law, creating an internal name regulation system without consciously thinking about law as a plausible alternative.²¹¹ The overlap between some elements

210. See *supra* note 201 and accompanying text.

211. See *supra* note 202 and accompanying text.

of the derby name regulation system and trademark law—the *Polaroid* factors,²¹² first-to-register priority—may at first blush seem to suggest that the Master Roster’s substantive norms were intentionally modeled on federal trademark law. However, any similarity between trademark law and derby norms is likely due not to law’s conscious or unconscious influence, but instead to the shared policy goals of these two bodies of law (e.g., avoiding consumer confusion) and common instincts about fairness (e.g., first in time, first in right). Most rollergirls appear to have a general knowledge that law exists and may be available to them,²¹³ but they tend to misunderstand law’s application²¹⁴ and instead look to the derby world’s internal norms when discussing name regulation.²¹⁵

That the Master Roster emerged independently of trademark law appears to have been a product of happenstance rather than path dependence. This does not mean, though, that the derby world’s system for regulating name uniqueness does not bear distinctive advantages that federal trademark law does not deliver. Using the Master Roster rather than some preset body of law allows the substantive rules and principles of derby name regulation to be created and controlled by skaters themselves. This bears a number of practical advantages. First, the informal manner in which derby girls enforce their name regulation rules creates a variety of flexible outcomes, in contrast with the binary approach of formal law, which tends to require all-or-nothing, winner–loser outcomes. Instead of issuing draconian cease-and-desist letters, derby girls can contact one another to propose, for example, geographic sharing arrangements, agreements to use conflicting names for limited times, or (in a handful of cases) sharing identical names. This flexibility and informality also makes interactions less threatening and more consistent with derby’s spirit of sisterhood. And while forgoing trademark means that derby girls cannot take advantage of certain remedies available

212. See *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961) (outlining non-exclusive factors for consideration in the likelihood-of-confusion analysis).

213. See, e.g., Posting of ifuritala to roller_girls@yahoogroups.com (Feb. 17, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/34586 (referencing the Bratz dolls case, *Bryant v. Mattel, Inc.*, Nos. CV 04-9049 SGL (RNBx), CV 04-09059, CV 05-2727, 2008 WL 5598275 (C.D. Cal. Dec. 3, 2008), *vacated sub nom.* *Mattel, Inc. v. MGA Entm’t, Inc.*, 616 F.3d 904 (9th Cir. 2010), in the context of a discussion about roller derby and noncompete agreements); Posting of Mercy, Bay Area Derby Girls, to roller_girls@yahoogroups.com (Jan. 5, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/16737 (seeking input on the process and cost of securing trademark protection for a league’s names and logos).

214. See, e.g., Posting of Betty.D.Bombshell to roller_girls@yahoogroups.com (Apr. 25, 2011), available at http://sports.groups.yahoo.com/group/roller_girls/message/42435 (suggesting that copyright is available to protect derby names); Posting of Willy Callit to roller_girls@yahoogroups.com (Nov. 10, 2007), available at http://sports.groups.yahoo.com/group/roller_girls/message/26080 (same).

215. See, e.g., Posting of Paige Burner, Arizona Roller Derby, & Grace Killey, Milwaukee Rollergirls, to roller_girls@yahoogroups.com (Jan. 30, 2008), available at http://sports.groups.yahoo.com/group/roller_girls/message/27440 (recounting the details of a “legal dispute” over the team name “Bruisers” that invokes only internal derby norms of fairness rather than formal IP law).

under the Lanham Act, such as money damages, these remedies are out of all proportion in relation to a skater's goal: to secure the uniqueness of her pseudonym within the derby world.²¹⁶

Second, the organic, bottom-up character of skate name regulation allows optimization of those rules for the derby community. For example, while the considerations that derby girls use to resolve infringement in the case of name similarity look a lot like the *Polaroid* factors,²¹⁷ some of the factors used by federal courts are irrelevant (derby girls apparently pay no mind to consumer sophistication, for example), while others are applied in just the opposite manner within the derby world (some derby girls consider the low quality of the competing name to be a factor inveighing against, rather than for, infringement²¹⁸). And while the reach of federal trademark protection is geographically limited to the United States, the Master Roster provides international rights to name exclusivity. More generally, the creation of an internal name regulation system assures that name governance will remain consistent with the distinctive values of the roller derby world.²¹⁹ The very idea of creating a name regulation system rather than using a preexisting one comports with the derby world's do-it-yourself ideology and guarantees that the instincts of rollergirls, rather than federal judges or PTO employees, will determine the outcome of name conflicts.

Finally, rollergirls prefer the Master Roster's self-created, extralegal character also because the derby world possesses both skepticism about, and sometimes even hostility toward, outsiders. Other scholarship on norm-based governance has found that insular communities tend to exhibit suspicion toward those who are not members of their group.²²⁰ In such groups, turning to lawyers to solve conflicts may be construed either as a sign of betrayal (because it exposes the internal affairs of the group to outsiders and possibly also to state actors) or even of weakness (because it demonstrates

216. Moreover, as I explain in more detail below, *see infra* notes 221–22 and accompanying text, engaging the apparatus of the federal judicial system would itself be offensive to roller derby's countercultural, do-it-yourself style.

217. *See supra* note 149 (discussing overlap between roller derby's informal standards for name infringement and the *Polaroid* factors for likelihood of confusion).

218. *See supra* note 161 and accompanying text.

219. *Cf.* T.D. Thornton, *Aw, Nuts: Why You Can't Give Your Thoroughbred an Obscene Name*, SLATE (Sept. 26, 2007), http://www.slate.com/articles/sports/sports_nut/2007/09/aw_nuts.html (describing the formal, extralegal racehorse name registration system that was designed, apparently without success, to eliminate tactless horse names).

220. *See, e.g.*, CSIKSZENTMIHALYI, *supra* note 57, at 91 (attributing conflicts between different groups to a human tendency to "assume that people who differ from us . . . have goals at cross-purposes from ours, and therefore must be watched with suspicion"); ELLICKSON, *supra* note 3, at 252 (declaring that when a group's legal system is controlled by outsiders, the group is likely to view the system as illegitimate, using the Muslim response to Soviet control of central Asia as an example); CASS R. SUNSTEIN, *WHY SOCIETIES NEED DISSENT* 157 (2003) (asserting that a diversity of communities "increases the likelihood of mutual suspicion" between different groups); *see also id.* at 112–13 (attributing political extremism to group polarization and the effects of psychologically separating group members from society by cultivating suspicion of nonmembers).

that you feel the need to get someone else to solve your problems for you).²²¹ In the highly insular world of roller derby, these effects are even more pronounced. The derby world comprises a counterculture as well as a subculture, so its members tend to have a particularly strong aversion to law and lawyers. This is because derby girls are rightly suspicious of the idea that mainstream law embodies their countercultural (and oftentimes antiauthoritarian) values and perhaps also because the paradigmatic suit-wearing, briefcase-wielding attorney is the cultural antipode of the tattoo-sporting, rebellious roller girl.²²²

2. *Explaining Why the Master Roster Arose.*—The foregoing section explained why skaters created the Master Roster from scratch rather than using available federal law. But this still leaves us with one more puzzle: Why did the Master Roster even arise in the first instance? After all, while organic processes may cause informal norm governance to arise, this cannot explain why formal regulation systems, like the Master Roster's registry and attendant written rules, initially develop. Formal property systems, legal or extralegal, require the intervention of individual actors to distill existing shared beliefs into writing and then require continued administration and enforcement of those rules.²²³

The existence of the Master Roster presents an iteration of what Elinor Ostrom has called the problem of supply.²²⁴ Formal property regulation systems like the Master Roster are public goods much like roads or the military: they create widely distributed social benefits that require the investment of time and effort by a number of individuals for whom the costs of their creation far exceed any marginal benefits they can extract from the system's existence.²²⁵ This cost-benefit disparity raises a basic puzzle: Why would

221. See ELLICKSON, *supra* note 3, at 60–62 (describing the “no lawsuits” norm among Shasta County ranchers); *id.* at 250–51 (describing similar norms among Maine lobstermen and Wisconsin business executives).

222. Cf. Posting of Busta Armov to roller_girls@yahoo.com (Jan. 19, 2011), available at http://sports.groups.yahoo.com/group/roller_girls/message/41401 (observing the relative dearth of legal knowledge in the roller derby world and encouraging roller derby lawyers to band together to educate derby girls about IP). There are, obviously, exceptions to the rule that lawyers do not belong in the derby world, but the lawyer-roller girls I've spoken to have mostly asked me to keep their professional status secret, which sort of proves the point. See *supra* note 61 and accompanying text.

223. See Carol M. Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, 2 YALE J.L. & HUMAN. 37, 52 (1990) (positing the necessity of “the kind of individual who has to be there to create, maintain, and protect a property regime”).

224. See *supra* note 19 and accompanying text; see also Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1245 (1968) (suggesting that the provision of public goods is impossible absent markets or the state).

225. See Rose, *supra* note 223, at 50 (observing that parties must give up their first-choice course of action in order to maintain a common property system); see also Russell Hardin, *The Free Rider Problem*, STAN. ENCYCLOPEDIA OF PHIL. (May 21, 2003), <http://plato.stanford.edu/archives/fall2008/entries/free-rider/> (noting that collective action requires at least one person in the system to be “de facto altruistic”).

any one individual provide such a system in the first instance? The state usually answers this problem. Public goods are typically provided by the government and funded by taxpayers (hence we have a military, roads, and a state-run system of property law and a judicial and executive apparatus to enforce it).²²⁶ Even outside the public sphere, extralegal property systems may still arise if a group that benefits economically from the provision of extralegal regulation of information goods pays for the creation and ongoing maintenance of such a system to provide that regulation.²²⁷ The Master Roster fits neither model, though. It evolved and continues to succeed even though derby is not a for-profit activity and even though the Master Roster's creators and administrators aren't paid a dime for their efforts.

This latter fact in particular appears to confound traditional rational-choice theory, which assumes that individual wealth maximization drives human conduct.²²⁸ Traditional rational-choice theory obviously fails to explain why early derby pioneers Hydra, Soylent Mean, and Paige Burner created and administered the Master Roster. The time and trouble it cost them to generate this system far outweighed the value that accrued to each of them individually by securing the uniqueness of their derby names,²²⁹ as is the case with the creation of any public good.²³⁰ From the perspective of individual wealth enhancement, these women would have been far better off spending a grand and getting federal trademark registration, which would have been much less costly than investing an enormous amount of effort in starting and perpetuating a novel name registration regime for thousands of other skaters.

226. See Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387, 388–89 (1954) (positing that while a market-based system could in theory achieve a similarly optimal distribution of resources as a public system, the incentive to capture selfish benefit makes optimality in a self-policing system impossible).

227. See, e.g., Bernstein, *Opting Out*, *supra* note 5, at 148–50 (discussing the benefits of extralegal arbitration and contract-enforcement mechanisms in diamond trading); Bernstein, *Private Commercial Law*, *supra* note 5, at 1739–44 (noting the advantages of private arbitration and unique rules for contract enforcement in the cotton industry); Thornton, *supra* note 219 (describing the formal, extralegal system for regulating racehorse names); see also SCREEN ACTORS GUILD, SCREEN ACTORS GUILD MEMBERSHIP RULES AND REGULATIONS 15, available at http://www.sag.org/files/sag/documents/SAG_Membership_Rules_0.pdf (“It is the Guild’s objective that no member use a professional name which is the same as, or resembles so closely as to tend to be confused with, the name of any other member. The Name Duplication Committee of the Guild, through consultation and mediation with the members involved, will work towards an equitable resolution of name duplication disputes.”).

228. Compare Rose, *supra* note 223, at 39 (“[F]or property regimes to function, some of us have to have other-regarding preference orderings that the classical property theory would not predict . . .”), with RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 3–10 (8th ed. 2011) (outlining the baseline assumptions animating rational-choice approach to legal analysis).

229. See Interview with Ivanna S. Pankin, *supra* note 30 (asking why Paige Burner would masochistically do so much work on the Master Roster in the absence of any obvious recompense and comparing her to Mother Teresa for her efforts).

230. See *supra* note 225 and accompanying text.

The existence of the Master Roster seems less confounding if we take a broader view of what welfare means, a view that defines the term to include any form of self-betterment, rather than just pecuniary gain.²³¹ People often engage in nonmarket activities in order to gain rewards that are nonmonetary but still personally valuable.²³² Members of online communities, such as Wikipedia, often contribute to the formation and content output of those communities not because they expect a financial payoff, but because they seek to have status and notoriety as big players within those insular, self-contained worlds.²³³ From this perspective, it's pretty clear that working on the Master Roster enhanced its creators' individual welfare, even if it didn't enhance their individual wealth. The rollergirls who developed and maintain the Master Roster accrued a number of nonpecuniary amenities, such as power (as the gatekeepers of all skaters' names), status (recognition from any derby person who wants to register a name), and praise (which is entirely justified given their unflagging commitment and hard work).²³⁴

But to reduce the emergence of the Master Roster to an equation that looks solely to wealth—or even to welfare—maximization may miss the spirit of altruism that inspired its development.²³⁵ The skaters who created

231. See Richard A. Posner, *Rational Choice, Behavioral Economics, and the Law*, 50 STAN. L. REV. 1551, 1557 (1998) (arguing that the assumption of interdependent utilities—that an actor increases his welfare by increasing that of another—can help to rationalize altruistic conduct).

232. See, e.g., Lior Jacob Strahilevitz, *Charismatic Code, Social Norms, and the Emergence of Cooperation on the File-Swapping Networks*, 89 VA. L. REV. 505, 538–47 (2003) (analyzing and explaining the emergence of altruistic file-sharing norms on peer-to-peer file-swapping networks); see also Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 369–72 (1997) (articulating a “hero” theory of norm development in which people within a community engage in activities in order to earn status within that community).

233. See, e.g., CLAY SHIRKY, *HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS* 141 (2008) (observing that Wikipedia “exists . . . as an act of love”).

234. Countless message board posts laud Paige Burner and Soylen Mean, as well as Hydra before them, for taking on the burden of creating and maintaining the name registration system. See, e.g., Posting of Cargarza777, *Arizona Roller Derby*, to roller_girls@yahoo.com (Feb. 3, 2006), available at http://sports.groups.yahoo.com/group/roller_girls/message/5069 (“Paige you’re AWESOME . . . and you work so damn hard!”). Paige Burner in particular made truly Herculean efforts toward the end of her tenure as the Master Roster’s administrator, spending as many as forty hours a week outside of her work obligations to review and register names—even though she had long since retired as an active skater for Arizona Roller Derby. See Interview with Hydra, *supra* note 62 (explaining how much time Paige was spending on the Master Roster around that period).

235. The meaning—and existence—of altruism is hotly contested. See Hila Keren, *Considering Affective Consideration*, 40 GOLDEN GATE U. L. REV. 165, 192–93 (2010) (reviewing opposing viewpoints in the “monumental literature” on the existence and nature of altruism). Here, I invoke the idea of altruism to refer to acts performed largely out of concern for others or for some external cause, rather than solely to better oneself. The line between self- and other-regarding preferences is concededly blurry, since many people—such as derby girls—may contribute to a community both because they want to enhance that community and because they believe their actions will redound to their individual benefit (e.g., by earning subcultural status or praise). This is consistent with the growing consensus in the psychological literature, which acknowledges at least some place for altruism in human motivation. See Jane Allyn Piliavin & Hong-Wen Charng, *Altruism: A Review of Recent Theory and Research*, 16 ANN. REV. SOC. 27, 27 (1990) (noting this growing consensus).

and maintain the Master Roster did so to a large degree not because they were seeking some monetary or hedonic payoff but because they wanted to enhance the derby world itself. Regulating derby names did more than merely coordinate conduct; it enhanced and contributed to the community that comprises the heart of roller derby. The Master Roster replaced name conflict and confusion with coordination and collaboration. And by encouraging individual interaction as the primary means for name-conflict resolution, it channeled disputes into personal conversations that sometimes resulted in friendly resolutions—and outright friendships—that are part of the glue that holds the derby world together.²³⁶ Moreover, the substantive choices made by the Master Roster’s creators and administrators help reflect and reinforce the values of the derby world. The Master Roster rewards and incentivizes ingenuity (in rewarding those who first think of names), encourages self-actualization (by delegating enforcement to league name wranglers and individual rollergirls), and models the kinds of values that the derby community ideally seeks to realize (information sharing, volunteerism, collaborative creation).²³⁷

This explanation questions, but does not undermine entirely, rational-choice accounts of how and why property systems arise. Rather, it is an explanation that looks to a richer notion of how individuals derive value from the work they engage in and what motivates us to work at all. Numerous scholars have challenged the long-standing assumption that people work only in exchange for tangible rewards. This traditional cost–benefit approach makes sense only in a commercial setting, where actors are presumed to be sharp-dealing individualists who are always seeking to maximize their wealth at each other’s expense. By contrast, though, in many other settings, social rather than market norms are at play, and actors are motivated not by accumulating dollars but by a sense of altruism and similar other-regarding preferences.²³⁸ This is why, for example, it’s appropriate to pay for your

236. On occasion, a name dispute can transition into a friendship. *See, e.g.*, E-mail from Fighty Almighty, Rat City Rollergirls, to author (Oct. 9, 2008, 9:26 PM) (forwarding January 2006 correspondence between Mighty Aphrodite of the Lonestar Rollergirls and the then-named Fighty Aphrodite of the Bay Area Derby Girls concerning a heated dispute over their derby names); Posting from Fighty Irish, *supra* note 157 (admitting fault in the dispute for “not read[ing] the roster closely enough”); E-mail from Fighty Almighty to author (Oct. 9, 2008, 9:35 PM) (forwarding April 2007 correspondence between Fighty Almighty and the Cape Fear Roller Girls defending Mighty Aphrodite’s name on Mighty’s behalf); and E-mail from Fighty Almighty to author (Oct. 9, 2008, 9:33 PM) (forwarding March 2007 correspondence between Mighty Aphrodite and the renamed Fighty Almighty in which the two expressed camaraderie over the enforcement of naming rights and planned to meet socially in Austin, Texas). *Cf.* KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 178 (2006) (arguing that antidiscrimination law should be structured to encourage employers and the state to engage in constructive dialogue with employees about termination and discipline decisions).

237. *Cf.* Rose, *supra* note 223, at 56–57 (arguing that the theoretical underpinnings of a property law regime convey a narrative that both speaks to and constitutes a moral community).

238. *See* DAN ARIELY, *PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS* 75–82 (rev. ed. 2009) (comparing market norms and social norms).

meal at a restaurant but not to fork over \$100 to reimburse a friend as you leave his or her dinner party.²³⁹ Yochai Benkler has invoked this insight to help explain the remarkable productivity of networked creation on the Internet.²⁴⁰ Such creation, he suggests, occurs at least in part due to the power of nonmonetary incentives, whether fame within a particular community or an altruistic desire to enhance a community in which a person feels deeply and individually invested.²⁴¹

The Master Roster is clearly a product of social rather than market norms. Its developers and administrators were inspired to create it not because they wanted to make a buck²⁴² but for the same reason that derby girls (and guys) spend their free time volunteering for the sport: because they are deeply individually invested in the sport and want to contribute to building the derby community and making it better. That the Master Roster's creators and administrators received no monetary recompense may thus actually help to explain, rather than confound, the creation of the derby name regulation system. Research has shown that actors often do more and better work when they are not financially compensated (at least as compared to how they do when offered moderate, rather than exorbitant, compensation).²⁴³ This appears to be because the absence of payment forces our conduct to be framed in terms of altruism and community betterment, which can be more compelling forces than a salary.²⁴⁴ Related work has found that where actors feel personally invested in their work, the sense of identity enhancement they derive from that work is a much more powerful driver of efficiency than salaries.²⁴⁵ The identity-constitutive character of the

239. Cf. Carol M. Rose, *Whither Commodification?*, in *RETHINKING COMMODIFICATION: CASES AND READINGS IN LAW AND CULTURE* 402, 409 (Martha M. Ertman & Joan C. Williams eds., 2005) (observing that it is socially acceptable to bring a bottle of wine to a friend's dinner party but that to bring the equivalent amount in cash would cause serious offense).

240. See Yochai Benkler, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM* 92–97 (2006) (referring to examples such as blood banks and amateur sports as helping to explain nonmarket peer production in networked settings).

241. *Id.*

242. And they may have been able to do this, for example, by charging rollergirls or leagues a reasonable fee to register their names on the Master Roster. Some derby girls have suggested that they would be happy to comply with such a system. See Posting of Ivanna S. Pankin to roller_girls@yahoo.com (May 15, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/35430 (proposing, and finding widespread support for, a \$1 fee to register names).

243. See, e.g., ARIELY, *supra* note 238, at 79 (noting that the same group of lawyers who refused to help the elderly for \$30 per hour agreed to do so a year later on a purely volunteer basis); see also John Quiggin & Dan Hunter, *Money Ruins Everything*, 30 HASTINGS COMM. & ENT. L.J. 203, 204–05 (2008) (pointing out the number and quality of creative works produced with no commercial motivation).

244. See ARIELY, *supra* note 238, at 94 (“Money, as it turns out, is very often the most expensive way to motivate people. Social norms are not only cheaper, but often more effective as well.”).

245. See AKERLOF & KRANTON, *supra* note 21, at 42–43 (noting that “insiders” who identify with their firms do not need monetary rewards to induce them to work hard, but “outsiders” need

Master Roster's creation is particularly pronounced because skate names are a central part of derby girls' subcultural (and personal) identities.²⁴⁶ More generally, though, the Master Roster is simply one instance of roller derby's volunteerist ethic, in which everyone who is a part of the community contributes her time for love, not for money.

C. Beyond Law and Norms: More Lessons Law Can Learn from Roller Derby

It is not new that people often act from motivations more obscure than external rewards. To take just one example, property scholars have investigated the motivations underlying gift economies for some time.²⁴⁷ Nor is it new that regulation takes place outside the context of formal law. Numerous scholars have provided thick descriptions of informal, norm-based regulation systems. Lisa Bernstein, for example, famously chronicled the elaborate and long-standing formal systems of extralegal dispute resolution employed by Amsterdam diamond merchants and Memphis cotton traders.²⁴⁸ But roller derby's Master Roster does not fit squarely within any of these accounts. It is a formal system that arose in the absence of market forces or the state, posing a particularly difficult iteration of the problem of supply.

As I discussed above, solving this novel problem requires us to relax traditional rational-choice assumptions about what moves people to engage in labor. Numerous scholars have investigated the proliferation of Internet-based production in the absence of traditional motivations.²⁴⁹ The prevalence of user-generated content (UGC) such as group weblogs or fan fiction or aggregated opinion (e.g., Yelp!) is familiar. Less familiar is the category illustrated by the Master Roster: user-generated governance system(s) (UGGS). Explaining the emergence of UGGS raises a harder problem than explaining the emergence of UGC. After all, people may write a blog because they love writing or because they want fame or attention. But why would people create the system that enables UGC to be created? There is at least one other highly salient example of a UGGS that helps to develop a conjecture for why such systems emerge.

wages to compensate them for their "loss in identity utility"); *cf.* DANIEL H. PINK, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US* 88–92 (2009) (extolling "autonomous motivation" as a means of enhancing output and increasing well-being).

246. *Cf.* Heymann, *supra* note 63, at 445 (observing that names are primary indicators of, albeit separate from, personal identity).

247. *See, e.g.,* Michael G. Flaherty, *The Gift Economy*, 68 SOC. FORCES 650, 650 (1989) (book review) (noting that gift economies are motivated by a desire for "the social construction of intimacy and community" as opposed to more tangible economic factors).

248. *See supra* note 5 and accompanying text. Much the same may be true in the context of intangible goods, where members of the Screen Actors Guild and owners of racehorses also opt for their own governance systems rather than the ones law provides. SCREEN ACTORS GUILD, *supra* note 227; Thornton, *supra* note 219.

249. *See, e.g., supra* notes 232–33 and accompanying text.

The well-known online encyclopedia, Wikipedia, not only provides objective content about the world but also has its own elaborate system of governance that, like the Master Roster, was developed and continues to be administered entirely by volunteers.²⁵⁰ Wikipedians and derby girls have more in common than one might expect. Both groups consist of a networked community that is distributed physically but woven together by a common interest. The intensity with which Wikipedia's members share their idiosyncratic interest makes their community close-knit in a social, if not a physical, way.²⁵¹ Moreover, Wikipedians and derby people alike share a deep sense of personal investment in their work, so that their contributions to the good governance of that world enhance not only their beloved subculture, but also their own identities.²⁵² Finally, members of both groups contribute to community governance not because they fear coercion or for some monetary reward, but because of some less tangible motivation—perhaps, one could say, for love. The commonalities between these two groups indicate that UGGS tend to develop spontaneously to govern the nonmarket production of IP by identity-constitutive communities. This in turn suggests a more textured answer to the familiar problem of supply. Public goods arise not only when the state mandates them or when interested parties will pay for them, but also when they are labors of love.²⁵³

This study of the Master Roster not only adumbrates the story of why property systems emerge but also contributes to a growing critique of how IP regulation should be constructed. The skaters who created the Master Roster did so in the absence of pecuniary motivation. Indeed, the entire derby world arose in the absence of traditional profit motivations. All the parts of the derby world, from uncopyrightable elements like live sports performance, to

250. See David A. Hoffman & Salil K. Mehra, *Wikitruth Through Wikiorder*, 59 EMORY L.J. 151, 157 (2009) (“Wikipedia remains a site largely run and created by volunteers.”).

251. See BENKLER, *supra* note 240, at 72 (arguing that Wikipedians comply with the site's rules because they share “a dedication . . . to objective writing” and appreciate “open discourse . . . aimed at consensus”).

252. The nomenclature used by members of each group to describe themselves illustrates the point. To take one of about a million examples, consider a blog post, entitled “I’m a Derby Girl,” from a woman describing her decision to join a league. *I’m a Derby Girl*, HOPENMINDED.COM (Nov. 9, 2009, 12:10 PM), <http://hopenminded.com/2009/11/09/im-a-derby-girl/>. Similarly, those who contribute substantially to Wikipedia refer to themselves as “Wikipedians.” Wikipedia, *Wikipedia: Wikipedians*, <http://en.wikipedia.org/wiki/Wikipedia:Wikipedians> (last modified Feb. 10, 2012); see also Wikipedia, *Motivations of Wikipedia Contributors*, http://en.wikipedia.org/wiki/Motivations_of_Wikipedia_Contributors (last modified Feb. 15, 2011) (recounting that a common theme among anecdotal testimonials of people who contribute to Wikipedia is that they enjoy “being part of the Wikipedia community”).

253. See Hoffman & Mehra, *supra* note 250, at 208 (observing that in addition to Adam Smith's traditional dichotomy between market exchange and state coercion as primary drivers of action, “[i]n our user-generated world, we might add labors of love”). What constitutes a “labor of love” is elusive. One way to think about it would be that labors of love are those which confound the traditional rational-choice notion that we work in exchange for some recompense, monetary or otherwise. Labors of love can't be explained by this equation because cost and benefit collapse into one—the labor *is* the reward.

those subject to trademark protection like derby names, to those that are copyrightable like original team logos, have this feature in common: they were made with no (or at least very little) profit as their core motivation. Much creation, especially on the Internet, happens in the absence of traditional pecuniary motivation. This point is so familiar that Samuel Johnson's famous dictum—"No man but a blockhead ever wrote, except for money"²⁵⁴—is valuable only to illustrate that even august men of letters can utter complete drivel at times.

But while nonfinancial motivations for creation have long been recognized, they have also been dismissed as marginal, rather than central, to a dominantly financial story of why creation happens. The Constitution itself suggests that a utilitarian quid pro quo lies at the heart of creators' and inventors' motivations,²⁵⁵ and leading IP commentators continue to accept uncritically this standard incentivist account.²⁵⁶ But critics of this approach increasingly suggest that shared infrastructure and altruistic motivations lie at the heart of, rather than as a mere sidelight to, the story of IP production.²⁵⁷ Much IP production would not be possible without infrastructure resources that are best managed as commons, such as essential facilities, basic scientific research, and the Internet itself.²⁵⁸ And the advent of the Internet has also exposed, and perhaps even fueled, the extent to which nonmarket production is a primary, rather than an incidental, contributor to our cultural environment.²⁵⁹

One might rightly answer: So what?²⁶⁰ Extralegal regulation has long existed comfortably alongside legal regulation for centuries, and courts have

254. 2 JAMES BOSWELL, *THE LIFE OF SAMUEL JOHNSON, LL.D.* 14 (Oxford Univ. Press 1904) (1791).

255. See U.S. CONST. art. I, § 8, cl. 8 (granting Congress the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries").

256. See, e.g., WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY* LAW 40–41 (2003) (expounding this traditional economic account of copyright).

257. See YOCHAI BENKLER, *THE PENGUIN AND THE LEVIATHAN: THE TRIUMPH OF COOPERATION OVER SELF-INTEREST* 169–201 (2011) (illustrating the interplay between pecuniary motivations and intrinsic motivations and how they influence people's actions); Brett Frischmann, *An Economic Theory of Infrastructure and Commons Management*, 89 MINN. L. REV. 917, 974–78 (2005) (making the case that open-access infrastructure allows the freer production of goods and releases the market and government from having to "pick[] winners"); cf. Carol M. Rose, *Romans, Roads, and Romantic Creators: Traditions of Public Property in the Information Age*, 66 LAW & CONTEMP. PROBS. 89, 102–05 (2003) (questioning whether "the whole realm of intellectual endeavor [should] be considered" a public domain because of the degree to which intellectual creations are synergistic and rely upon each other).

258. See generally Frischmann, *supra* note 257 (outlining the positive externalities generated by a commons system in managing policy regimes, including intellectual property).

259. Cf. BENKLER, *supra* note 257, at 169–201 (arguing that nonmarket motivations, in addition to economic self-interest, can be a driver of human action or economic production).

260. See Rochelle Cooper Dreyfuss, *Does IP Need IP? Accommodating Intellectual Production Outside the Intellectual Property Paradigm*, 31 CARDOZO L. REV. 1437, 1447–65 (2010)

developed bodies of law to mediate the extent to which law should stay separate from or incorporate customary norms.²⁶¹ And the existence of authors who wrote for a living has not stopped other authors from writing for other reasons, as the fact that Mark Twain and Emily Dickinson were contemporaries illustrates.²⁶² I think this dismissal of the issue is too sanguine for several reasons. First, as nonmarket production begins to approach, or even overwhelm, the level of traditional market-based production, the potential for conflicts between them arises. This potential has already been realized in the derby setting, where commercial leviathans Frito-Lay and Starbucks have pursued (or at least threatened) trademark actions against derby teams and girls.²⁶³ However these cases may be resolved, the conflict is an ill-fitting one because the mark owners and the derby users are seeking very different things—securing economic monopoly on the one hand, and self-expression and identity on the other. And even in the absence of this practical concern, there is something concerning about the increasing likelihood that the foundation of our blackletter IP law is premised on an empirical fact about motivation that does not match the way much (even if not all) modern creative production actually happens. This concern is magnified by findings that market and nonmarket incentives tend to trade off with one another in a zero-sum manner rather than existing in equilibrium.²⁶⁴

Finally, this story about regulation within the roller derby world is also a story about sports, law, and what the former can tell us about the latter. The idea that sports and law are connected is familiar in one sense. The field

(identifying several practical and normative barriers towards widespread intellectual production outside of the normal IP regime but ultimately concluding that society should “modify the current legal regime so that it can foster intellectual production in both [IP and open] environments simultaneously”).

261. See, e.g., *Ghen v. Rich*, 8 F. 159, 159–62 (D. Mass. 1881) (using New England whaling customs to resolve a dispute about found property). The secondary literature on custom’s relationship to law is too large to be catalogued here. For an interesting and relevant discussion, compare Jennifer E. Rothman, *The Questionable Use of Custom in Intellectual Property*, 93 VA. L. REV. 1899, 1980–82 (2007), resisting the use of custom in copyright, with Richard A. Epstein, *Some Reflections on Custom in the IP Universe*, 93 VA. L. REV. IN BRIEF 223, 225–29 (2008), defending the use of custom in copyright.

262. Mark Twain was first published in 1851. RON POWERS, *MARK TWAIN: A LIFE* 55 (2005). He frequently received payment for his works and lectures. See JEROME LOVING, *MARK TWAIN: THE ADVENTURES OF SAMUEL L. CLEMENS* 172 (2010) (enumerating in detail Twain’s payments for his writings in the early 1870s). During the same period as Twain, Emily Dickinson continued to write even though her works were largely unpublished and thus she was unpaid. See POLLY LONGWORTH, *THE WORLD OF EMILY DICKINSON* 1–4 (1990) (describing Dickinson’s early poetry studies in the 1850s and ultimate lack of publication before her death).

263. See *supra* notes 48, 190.

264. See, e.g., ARIELY, *supra* note 238, at 78–80 (discussing an experiment in which subjects who were asked to perform a task as a favor to the researchers worked harder than subjects who were paid fifty cents to perform the same task and explaining that the paid subjects did not think of themselves as doing a favor *and* getting paid, because once market incentives entered the picture, social incentives were pushed out).

of “sports law” has enthusiasts throughout academia and practice. As it’s currently understood, though, sports law is about how law (torts, contracts, IP) applies to sports. A related, but virtually untouched, line of inquiry is what the regulation of sports tells us about law. Some philosophers have used sports to exemplify general theories. Rawls, for example, used baseball to illustrate his practice conception of rules.²⁶⁵ But the possibility that the rule systems that govern sports may tell us something about state-created legal regimes has largely remained ignored by scholars engaged in legal philosophy.²⁶⁶

Roller derby’s regulation of skate names raises at least one issue that reflects on the nature of law more generally. Throughout this Article, I have contrasted derby’s “norms” or “rules” with IP “law.” I am not alone in doing this. This linguistic distinction pervades both the traditional work on social norms as well as the more recent literature about IP’s negative space.²⁶⁷ Even skaters themselves are well aware that the Master Roster does not trigger state-enforceable rights as trademark and copyright would, and they refer to the Master Roster and its attendant rules as not “legal.”²⁶⁸ Yet this well-accepted distinction warrants interrogation.²⁶⁹ An entire field of study—analytical jurisprudence—has developed to evaluate what it means for a rule to be law, and space constraints mean that I can only gesture at this issue, rather than addressing it in anything like complete detail.²⁷⁰ That said, we can plausibly examine this question using Bentham’s account of the essential features of law²⁷¹: law must regulate behavior, be enforceable, and

265. John Rawls, *Two Concepts of Rules*, 64 PHIL. REV. 3, 25 (1955).

266. See Mitchell N. Berman, “Let ‘em Play”: *A Study in the Jurisprudence of Sports*, 99 GEO. L.J. 1325, 1329–31 (2011) (discussing the lack of interest in sports as an object of study among legal philosophers). Berman’s work is a welcome exception to this general rule that legal scholars are uninterested in sports’ lessons for law. See generally *id.*; see also Mitchell N. Berman, *Replay*, 99 CALIF. L. REV. 1683, 1730–36 (2011) (drawing from football replay practices an argument that juries finding for acquittal in criminal cases should have to choose between two verdicts—not guilty and not proven—as is the case in Scots law).

267. See, e.g., ELLICKSON, *supra* note 3, at 52–53 (suggesting that “norms, not legal rules,” are central to dispute resolution among Shasta County ranchers); Loshin, *supra* note 11, at 134–35 (contrasting magicians’ use of norms to protect their IP with IP law, which is substantively unavailable to the magicians); *supra* note 10 and accompanying text (introducing the term *negative space*).

268. See *supra* notes 176–77, 184 and accompanying text.

269. Thanks to my colleague John Tehranian for pushing me to investigate the coherence of the law–norm distinction in this setting.

270. Cornerstone works on this centuries-old debate include JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* (London, John Murray 1832), RONALD DWORKIN, *LAW’S EMPIRE* (1986), and H.L.A. HART, *THE CONCEPT OF LAW* (2d ed. 1994).

271. This is far from the only way to think about this issue. See the sources cited in note 260, *supra*, for an illustration of alternative perspectives. I use Bentham’s formulation merely as a helpful framework to illustrate the complexity introduced by asking whether derby’s Master Roster is law. For a good recent overview of the major strains within analytical jurisprudence (as well as a critique of them and a countertheory), see SCOTT J. SHAPIRO, *LEGALITY* 193–233, 282–306 (2011). See also Ian P. Farrell, *On the Value of Jurisprudence*, 90 TEXAS L. REV. 187 (2011) (reviewing SHAPIRO, *supra*).

enjoy legitimacy.²⁷² In light of these criteria, though, one may well ask how the derby name regulation system is *not* law. It incentivizes a series of desired social practices and deters undesirable ones. It is written down in a central location that allows skaters to have a shared understanding of its content and allows skaters to determine what conduct is permissible. It comes with a series of sanctions that relevant actors understand and comply with. And it has enough legitimacy that the relevant group takes it seriously and obeys it almost without exception.

A familiar colloquial distinction between formal rules and law is that the latter emanates from the state and carries the force of coercive sanctions by government actors. Observers of informal IP norms have suggested that norms may determine *behavior* but that they only become *law* when adopted by state actors.²⁷³ But this only pushes the question back one level: why should we regard state origination as law's primary definitional criterion? A typical answer is that rules emanating from government have breadth and (at least in democratic countries) legitimacy that informal rule structures do not.²⁷⁴ And yet roller derby (and other subcultures obedient to extralegal rules, such as Wikipedia or even the world of racehorses) confounds this instinct about legitimacy. If anything, derby girls have more respect for and deference to their own do-it-yourself rules than to state-imposed law, toward which their antiauthoritarianism generates skepticism.²⁷⁵

As the foregoing discussion illustrates, whether roller derby's Master Roster is law is a complex question that can't be resolved in this brief discussion, not least because it depends on contested visions of what it means for a system of rules to be law. But I do want to suggest one variation on this inquiry that might shed some light on how we think about this issue more generally. I've been asking whether derby's Master Roster is law, much as analytical jurists tend to seek some intrinsic quality that some rule systems share in common that make them law, while differentiating other rule systems that lack that quality as not-law. Scott Shapiro called this the

272. See JEREMY BENTHAM, *OF LAWS IN GENERAL* 1–17 (H.L.A. Hart ed., 1970) (defining a “law”).

273. See, e.g., Robert Cooter, *Normative Failure Theory of Law*, 82 CORNELL L. REV. 947, 949 (1997) (suggesting that laws are only necessary where social norms fail to function efficiently); cf. Henry E. Smith, *Does Equity Pass the Laugh Test?: A Response to Oliar and Sprigman*, 95 VA. L. REV. IN BRIEF 9, 12–13 (2009) (analyzing whether the IP norms of stand-up comedy should be incorporated into law).

274. See Allan Ides, *Judicial Supremacy and the Law of the Constitution*, 47 UCLA L. REV. 491, 494 (1999) (“To be treated as a law, the order must have a claim to authority that society recognizes as legitimate. In a representative democracy such as ours, this means that the order must emanate from an institution of government with the accepted authority to impose the order, and it must be produced by that institution through a manner in which the institution is authorized to proceed.”).

275. Cf. Stuart P. Green, *Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights*, 54 HASTINGS L.J. 167, 173, 239 (2002) (observing that the public often regards plagiarism norms as more legitimate than intellectual property laws).

“Identity Question.”²⁷⁶ He explains that “What is law?” can be understood “as a search for the identity of law” and that “the task is a taxonomical one. When we say that a given rule is a legal rule, what makes it a *legal* rule, and not a rule of etiquette, chess, Catholicism, Microsoft, morality, or my friend’s conception of morality?”²⁷⁷

This version of the Identity Question divides rule systems into a neat binary, where some rule systems are law and others are not. What I want to at least gesture at briefly before concluding is whether the binary law–not-law distinction may be the only—or even the best—way to think about this question. One alternative might be to abandon the search for a Platonic feature that makes a rule system *law*, and instead to identify a series of features that can make rule systems more or less law-like. Instead of asking “Is the Master Roster law?” we might instead inquire, “To what extent does the Master Roster possess qualities of law-iness?”²⁷⁸ This approach would abandon the cleanliness of analytical jurisprudence’s identity question, which sharply sorts the world into law and not-law systems. But considering law (or law-iness) a quality that systems can possess with matters of degree, rather than something that exists as a binary presence or absence, might be more descriptively accurate, and possibly more useful, given the complexity and range of rule systems that populate our cultural ecology.

Conclusion: The Twilight of Derby Names?

The story of derby name regulation may be reaching its end, even as roller derby itself appears to be growing inexorably. It is this growth that has threatened the viability of the Master Roster and the current name regulation regime in two ways. First, as derby girls begin to number in the thousands, and possibly soon the tens of thousands, their sheer volume may overwhelm the capacity of the volunteers who administer the Master Roster.²⁷⁹ Even as

276. SHAPIRO, *supra* note 271, at 8.

277. *Id.* at 12; *see also id.* at 10–12 (discussing the nature of “What is law?” in more detail).

278. *Cf. The Colbert Report: The Word—Truthiness* (Comedy Central television broadcast Oct. 17, 2005), available at <http://www.colbertnation.com/the-colbert-report-videos/24039/october-17-2005/the-word---truthiness> (coining and defining the term *truthiness*). Apologies to Stephen Colbert. Not that he’s ever going to read this footnote.

279. *See* Posting of Minimum Rage, *supra* note 79 (suggesting that the volume of names created by derby’s substantially increased popularity renders the current Master Roster structure untenable). This debate continues at the time of this Article’s publication. Some skaters are so upset with ongoing delays in name registration that they want to abandon the Master Roster altogether. *See, e.g.,* Posting of Froggybluesock to roller_girls@yahoo.com (Apr. 25, 2011), available at http://sports.groups.yahoo.com/group/roller_girls/message/42436 (“[The Master Roster] works? We’re certainly not dealing with the same website. I don’t discredit the amount of work that [the Roster administrators] are dealing with, but the fact is that this system is broken. If I can skate under one name [f]or 8 months to be rejected because a name was approved six months into my wait time? [sic] I’m sorry, I’ll keep my name and go unregistered, but thanks.”). Other derby girls warn that such abandonment could portend disaster. *See, e.g.,* Posting of Betty.D.Bombshell, *supra* note 214 (“Once we as [a] sport abandon the [Master Roster.] it will do

of late 2009, there was a massive backlog of registrations pending because the quantity of applications simply couldn't be processed.²⁸⁰ This happened despite the fact that the Master Roster's main administrator, Paige Burner, worked tirelessly in her spare time, and on a pro bono basis, to keep up with the onslaught of submissions.²⁸¹ As a result, derby bigwigs have contemplated schemes that might ease the burden on the current system. One option would be to increase the automated character of the system, so that skaters (or, more plausibly, name wranglers) could register names themselves rather than having an administrator review each name independently.²⁸² For example, names with a low degree of similarity to preexisting names could be automatically registered, while names with a high degree of similarity to preexisting names could be automatically rejected. This approach would narrow considerably the number of proposed names that the administrators have to vet. Another, simpler way to winnow down the workload for the Master Roster's administrators would be to charge leagues (or skaters) a nominal fee to register their names.²⁸³ Even a \$10 registration fee per name would eliminate some of the nonserious requests, but this fee hardly seems high enough to exclude skaters who are impecunious.²⁸⁴ Yet none of these reforms have caught on, and numerous leagues have begun to ask whether the enormous

irreparable damage to the tradition of derby names. . . . [The Master Roster's] place in the history of modern derby is never going to be duplicated.”).

280. See Posting of Grace N Motion, Reno Roller Girls, to roller_girls@yahoogroups.com (Oct. 7, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37036 (indicating about a six-month backlog of name registration).

281. See Posting of Ivanna S. Pankin to roller_girls@yahoogroups.com (Dec. 3, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37758 (observing that Paige Burner was spending eight hours per day working on name registration in late 2009). At the end of 2010, Paige Burner finally stepped down as the Master Roster's administrator, and her responsibilities were taken up by a derby girl who used to go by Metal Vixen but now—irony of ironies—is one of the small number of skaters who competes under her real name. Telephone Interview with Elaina B., Lehigh Valley Rollergirls (Apr. 26, 2011). In the first several months of Elaina's work on the Master Roster, she was able to reduce the registration backlog significantly. *Id.*

282. See Posting of Ivanna S. Pankin to roller_girls@yahoogroups.com (Dec. 4, 2009), available at http://sports.groups.yahoo.com/group/roller_girls/message/37789 (discussing options for automating the Master Roster). This approach might also provide an interesting entry point for crowd sourcing. Names that are neither strongly similar nor dissimilar to preexisting ones could be evaluated for excessive similarity by the entire derby community, such as by posting proposed names on a public list for all to review. One approach would be to have names that were not objected to after one month become valid names. Interview with Hurt Reynolds, *supra* note 86.

283. See *supra* note 242. Monetizing the Master Roster could, however, undermine its success by making it seem like a for-pay chore rather than a labor of love. See PINK, *supra* note 245, at 37 (“[R]ewards can perform a weird sort of behavioral alchemy: They can transform an interesting task into a drudge. They can turn play into work.”).

284. At least one skater has even advocated a Thunderdome-style battle to the death at the annual RollerCon between skaters who are disputing similar names. Posting of Chrome Molly, *supra* note 149. I'm pretty sure she was joking.

difficulties associated with name regulation are worth the fun of having skaters compete under fanciful pseudonyms.²⁸⁵

But derby's extralegal system of name regulation might evaporate for a different reason. Many influential members of the derby community believe that the sport can find mainstream appeal, so that it becomes a full-fledged professional sport rather than an extracurricular pastime. Fanciful pseudonyms may represent a hurdle to the professionalization of derby to the extent that they may cause the sport to be treated as a silly entertainment rather than a serious athletic endeavor.²⁸⁶ A related concern is that derby names preclude skaters from receiving the individualized recognition that their excellence merits because it hides their real identities.²⁸⁷ If derby were to become fully professional, the practice of skating under pseudonyms might die out completely. After all, using derby names is central to the sport's countercultural character, and many skaters who want derby to have mainstream popularity think that skate names are one of the main features preventing the general public from taking it seriously. But even if derby did become professional while also seeking to maintain its use of pseudonyms, this could undermine the Master Roster regime for a separate reason. Were the sport to be governed by profit rather than community norms, the informal organization and shaming sanctions that currently assure name uniqueness may well fall by the wayside. A highly capitalized professional derby league could withstand the costs of widespread trademark registration, infringement suits, and contractual rights limitations that are unheard of in derby at present.

285. The Sockit Wenches of Seattle's Rat City Rollergirls seriously considered skating under their government names in 2011 because of the difficulty of securing and maintaining pseudonyms. E-mail from Fighty Almighty to author (Feb. 14, 2012, 9:39 PM). Their attempt was discouraged by the league, which cited privacy of rollergirls and confusion of fans as their main objections. *Id.* Ultimately, the Sockit Wenches ended up using skate names, like the rest of RCRG. *Id.*

286. As one skater observed,

I'm not in love with [derby names] anymore because they are a bastion of the old days when it was all performance and not a sport. It's amazing that we still have to contend with that perception but we do. I watch a lot of derby online. And when you're watching it on a screen and the whole thing is very professional, the names stick out and seem silly. Down with derby names!

E-mail from Mickispeedia to author (Oct. 12, 2011, 2:58 PM). Momentum for the professionalization of roller derby is gathering. *E.g.*, Suicide Seats, *Voices from the Stands: Is Professional Derby Closer than We Think?*, ROLLER DERBY INSIDE TRACK (July 27, 2011) <http://www.rollerderbyinsidetrack.com/2011/07/voices-from-the-stands-is-professional-derby-closer-than-we-think/>. Enthusiasm for this outcome is widespread but not universal. Some derby skaters would prefer that the sport remain insular and community-oriented. *See* E-mail from Fighty Almighty to author (Feb. 16, 2012, 4:22 PM) (suggesting that despite what most skaters say "out loud," in truth many of them "don't want the sport to go pro . . . because only an elite few would actually MAKE a pro team").

287. This is at least part of the impetus for many derby girls' skating under their government names—they want people to recognize them for their excellence, not to associate their feats with some mysterious pseudonym. *See supra* note 71.

Derby name regulation is only one part of the overarching narrative of roller derby's resurgence as an all-girl amalgam of rock-and-roll and full-contact sport. The women (and, it should be said, men) who have contributed to this development since the early 2000s combined vision, ingenuity, and an enormous amount of hard work to invent a cultural phenomenon and a subculture unlike any other. The Master Roster and its related rules comprise a story within this story, one bearing lessons for the study of law, social norms, IP, and property. Roller derby's name regulation system causes us to question prevailing legal centralist theories for IP norm emergence. It also suggests a conjecture explaining the development of user-generated governance systems in nonmarket settings. It suggests a richer answer to the problem of supply and adds a note to the growing sense that an IP system based on pecuniary considerations is ill fitting in a cultural milieu increasingly dominated by nonmarket forces. It even reflects on the nature of what it means for a regulatory system to be law. All this reminds us of the possibility that lessons about law may be found not only in libraries and courtrooms, but also in sporting venues, roller rinks, and other places where we are least likely to expect them.